

The employer contributions to the Plan and the careful management of the assets of the Plan by the thirty joint union and management Trustees from all sections of the United States and Canada have enabled the assets of the Fund to exceed its vested liability. The Fund would be able to pay out of its assets all accrued benefits to vested participants in the unlikely event of Fund termination. All participating employers have, therefore, been assured that under the existing ERISA requirements that they would not be subject to employer withdrawal liabilities.

The current status of the Fund and all relevant financial details are contained in the 1981 Annual Report which has been distributed to all Committee members.

In the Spring of 1975 the Fund presented oral and written testimony to the Subcommittee on Labor Standards of the House Committee on Education and Welfare during the ERISA Oversight Hearings conducted by that Subcommittee.

We testified in 1975 that a number of ERISA provisions would have a chilling effect on the Fund's ability to continue to grow.

We discussed the chilling effect in the context of resistance at the bargaining table by employers to participation in a multiemployer pension plan which under certain circumstances would expose up to thirty percent of the net worth of

their companies for reimbursement of benefits paid by the PBGC. It was primarily the fact that our assets exceeded the liability for all vested accrued benefits that prevented the chilling effect of the thirty percent liability which we were so concerned about at that time.

We also discussed other aspects of ERISA which we felt were impediments to the ability of the Trustees to manage the Fund for the benefit of the participants.

We were, therefore, pleased to read in the February 1979 recommendations by the PBGC, that the objectives for a multi-employer insurance program were announced to be:

- "1. The program must be compatible with the collective bargaining process;
2. The program should limit the liability of employers to their required contribution rate;
3. The program must prevent avoidable cost transfers to the insurance system while providing protection to employees in dying industries;
4. The program must protect responsible plans from having to assume the cost of plans providing overly generous benefits."

We agreed with these objectives then, and we agree with them now.

We testified in 1979 and agreed that poorly managed funds should be forced to take steps such as reducing benefits before other multiemployer funds should be expected to have a portion of their premiums used to finance even the reduced guarantee recommended in the Bill. We testified in favor of the concept that only insolvency should be insurable. We testified in

favor of the concept that no plan improvements within the sixty-month period prior to plan termination should be guaranteed. We testified in favor of more stringent funding requirements but only for plans in reorganization.

We further testified that rather than increasing the premium to \$2.60 for all funds, we recommended that PBGC be directed to adopt risk related premiums.

We also recommended that employers withdrawing from a fund -- especially a fund such as ours in which the assets exceed the vested liability -- should have no liability under any circumstances. As an alternative we suggested that a withdrawing employer have no liability unless the fund is in reorganization or goes into reorganization within five (5) years following the withdrawal.

We still fear that to expose an employer to any possible withdrawal liability will have a chilling effect on the ability of our Fund to grow. This would shift the chilling factor from the thirty percent employer liability in the original ERISA to the unlimited withdrawal liability in the Multiemployer Pension Plan Amendments Act of 1980. From one ice cube tray to another.

We reiterate the recommendations we made in 1979:

1. Employers withdrawing from a multiemployer fund in which the assets exceed the vested liability should have no employer withdrawal liability and the Fund should pay no premiums to PBGC.

2. If premiums must be paid to the PBGC, the PBGC should be directed to adopt risk related premiums.

Our suggested formula would be that funds would pay a PBGC premium equal to the total of the following components:

- (a) One-half the normal per capita rate; and
- (b) A fixed percentage of unfunded vested liability, the percentage varying to equal what PBGC has determined is needed to fund payments under its mandate.

If this formula were adopted, our Fund would pay only one-half the per capita because we have no unfunded liability.

Senator NICKLES. Thank you very much. I appreciate your synopsis and going right to the point.

Mr. PIERCE. My name is Laurence Pierce. I am the first vice president of the First National Bank of Boston. Today I am representing the Transportation Association of America. TAA for the record is an across-the-board policy organization of transport users, transport suppliers, investors and carriers of all the modes.

Based on a policy formally adopted by TAA's hundred member board of directors last October, the association is unanimously on the record as being in support of Senate 1748.

As a TAA director, I voted in favor of the policy, and as chairman of TAA's 40 member investor panel, I participated in the development of it. We have attached a roster of TAA's board of directors to my formal statement.

The first half of my statement describes the pension fund situation in the trucking industry prior to 1974, the impacts on the industry of the amendments of 1980 and the impact on the industry of the Motor Carrier Act of 1980. I will not cover any of that material since it has been covered by many of the other speakers this morning.

What I would like to contribute—which I think is original material as far as this hearing is concerned—is the point of view of lenders and investors in the motor carrier industry in particular.

A lender of money to the trucking industry is fundamentally a risk taker. He must be compensated through his payment of interest and also through recovery of his loan.

So before making any sizable loans he has to study the viability of the companies to whom he is lending through the period of the loan, and obviously, the greater the risk the higher the rate and possibly the greater the collateral that the lender would seek.

The 1980 amendments to ERISA clearly, in our and TAA's opinion, increased the risk to a lender of funds to a trucking company that participates in the multiemployer pension plan.

The existence of the large withdrawal liability likewise impedes the carrier from issuing equity to repay debt or strengthening his capital structure in any other way.

The changes are obviously major. The rules of the game no longer apply to lenders to the motor carrier industry, and the lenders' flexibility is greatly reduced, and in some cases completely impaired in terms of the various programs that would be structured to bring about a solution to a financial problem when it was perceived by the lender.

To be more specific, the withdrawal liability is an unsecured liability so a lender must be secured to place himself ahead of the pension fund claim. If not, he stands on equal footing, but the pension liability most likely would be much larger than the bank's claim in a liquidation.

The increase in risk means that institutional lenders will be less willing to lend on an unsecured basis, and traditionally a great many of our loans and those of other institutions have been on an unsecured basis, which provides a high degree of flexibility to the borrower.

Lenders will exercise more quickly any option to become a secured lender if they perceive any financial weakness, so that certain steps might be taken prematurely; for example, if a carrier was perceived to be in trouble.

Moreover, lenders might reach for much more collateral than would otherwise be necessary in order to secure themselves ahead of the claim being asserted.

In putting a claim on record, a period of 90 days is necessary before the carrier goes bankrupt in order to protect the security interest; so again there is an incentive on the part of the lenders to act as quickly as possible in the event of any difficulty.

Mr. Wilkinson, one of the people who testified earlier, noted that some accountants will undoubtedly start footnoting the withdrawal liability. We perceive in the banking business that that could, conceivably, actually trigger defaults in certain credit agreements which would otherwise not be in default. Clearly that would, again, precipitate action which would otherwise not be taken or at least not on that timetable.

Lenders, obviously, in the past have tried to work closely with carriers to develop alternatives if trouble is perceived. Those alternatives include liquidating a part of the business, perhaps moving from one location to another which might be more profitable at that point in time, eliminating traffic lanes, selling the entire business to somebody else, and bringing more equity in or carrying out an orderly liquidation. In any of those cases, the actions of the banking industry from this point forward are severely inhibited by the liability withdrawal, that potentially could be asserted in these cases.

For these and many other reasons, we believe that you can expect to see trucking participants finding it increasingly difficult to obtain either equity or debt from institutional investors.

Passage of S. 1748 could help to resolve many of those serious problems and TAA as well as its many investor members strongly urge passage at the earliest possible date.

Thank you very much.

[The prepared statement of Mr. Pierce follows:]

STATEMENT OF LAURENCE A. PIERCE
FIRST VICE PRESIDENT, THE FIRST NATIONAL BANK OF BOSTON
BEFORE THE SENATE SUBCOMMITTEE ON LABOR ON
S. 1748, MULTI-EMPLOYER PENSION PLAN STABILIZATION ACT
MARCH 17, 1982

My name is Laurence A. Pierce, and I am First Vice President, The First National Bank of Boston. I am appearing before your Subcommittee today as the spokesman for the Transportation Association of America (TAA) in support of S. 1748. This bill would exempt from the withdrawal and plan termination provisions of Title IV of the Employment Retirement Income Security Act (ERISA) those employers who have negotiated only contribution levels in multi-employer pension plans.

The objective of this bill is identical to that of a policy position adopted by the TAA Board of Directors at its last meeting in late October, 1981. Our Board, at that time, unanimously approved the following proposal:

"ERISA should be amended to provide that multi-employer pension plans in which industries have historically bargained given contribution levels rather than benefit levels should be recognized as exempt from the withdrawal liability and plan termination insurance of Title IV."

TAA is a national policy organization composed of transport users/suppliers, investors, and carriers of all modes (air, forwarder, motor, pipeline, rail and water) who work together to develop policy positions acceptable to all. Policy proposals considered by the TAA Board are first analyzed in depth by eight permanent panels representing the wide range of transport interests noted above -- all of whom express views to the Board prior to any final action. This procedure was followed in the development and adoption of the above TAA policy position. As shown by the attached TAA Board roster, the Board's action thus reflects the broad support for legislation such as S. 1748 of the nation's transportation community.

I currently am serving both as a member of the TAA Board of Directors and as the Chairman of its 40-member Investor Panel. This Panel is composed of high-

level executives in the banking, insurance, and brokerage fields who have major responsibility for transportation financial matters for their respective firms. My bank has been a long-time investor in, and lender to, the trucking industry and thus is well aware of the very serious problems that the ERISA Amendments Act of 1980 have caused. I shall comment at some length about the adverse effects of these amendments on the trucking industry, from an investor's point of view, later in my statement.

Trucking Industry Pension Plans Before ERISA

Long before passage of ERISA in 1974, motor carriers of freight subject to regulation by the Interstate Commerce Commission had collectively negotiated pension plans with the Teamsters Union. In all but a few instances, these collective bargaining efforts were limited to reaching agreement on the level of contributions that participating trucking companies would be obligated to pay towards their employees' pension rights.

Each carrier thus knew what it was committed to pay, and its pension contributions went into the general fund for use by all participating carriers. Individual carriers could expand operations, acquire other carriers, make other major operational changes, and even go out of business without serious concern about their pension obligations -- because they knew that pension benefits would be based on the level of funds available from their contributions. If pension benefit levels started to get out of line with contribution levels, the next bargaining sessions would seek to resolve the problem by adjusting the latter.

Employees were also able to switch jobs among participating carriers without concern about adverse effects on their pension rights. If their employer went out of business, these rights were protected as long as the plan remained in effect. Since the overall pension fund was stabilized by contributions made by new carriers that joined the plan, dissolution was not a

problem. In fact, to the best of our knowledge, no trucking industry pension plan has ever been terminated.

Trucking Industry Pension Plans After ERISA

While there was no danger, in 1974, of employees of regulated trucking companies losing their bargained pension benefits because of termination of pension plans, we understand that this was not the case for some other industries. The need to pass legislation to protect pension rights of employees was thus recognized and commendable -- provided the statutory pension obligations were limited to the rights agreed to through collective bargaining or other lawful contractual means. Even though there appeared to be no need for the application of such legislation to the trucking industry, this industry did not object to the principle that employers be required to honor their promised pension benefits to employees.

Unfortunately, there were some plan terminations in other industries, after ERISA was passed in 1974, which forced the Federal Government to pay pension obligations from a special insurance fund created by the Act. These obligations proved to exceed by far the total contributions made into this special insurance fund by participants in multi-employer plans. One of the major changes, therefore, that was made in the Amendments Act of 1980 was to transfer this insurance burden from the Government to the participants in such plans.

The 1980 Act also increased the statutory obligation on multi-employer pension plan participants for payment of pension benefits from 30 percent of the company's net worth to 100 percent. The Act, in addition, broadened the types of actions by employer participants that could trigger the application of this obligation -- from only plan terminations (which require the discontinuance of the plan by all participating carriers) to include both full and partial withdrawals by individual carriers.

Individual trucking companies, thus, were, for the first time, subjected to very sizeable statutory obligations if they took actions such as the following:

discontinued operations entirely, sold all or major parts of their operations, purchased operations of other participating carriers, and withdrew or substantially reduced through work-force reductions their contributions to the plan.

The most significant change created by the 1980 amendments was the imposition of pension benefit obligations on individual carriers that have proved to be far out of line, and in excess of, the carriers' contributions to the fund. As any trustee of a pension program is well aware, he faces extremely difficult problems in evaluating future pension benefits because of continuous changes in, or differences in opinion on, such factors as actuarial, inflation and interest rates; the stability of a plan's funding through continuous input of new participants; and the probable health of the industry itself. This is not the case, of course, where a company and its employees actually negotiate pension benefit levels -- a situation that is virtually nonexistent in the trucking industry.

Many individual carriers thus find themselves faced with pension benefit liabilities that far exceed their net worth. If they try to sell to another carrier, the latter has little interest because it must assume the entire liability burden. If the obligation is triggered, any companies affiliated with the withdrawing company can also be forced to assume the entire liability burden -- even that portion that exceeds the withdrawing company's net worth. Closing down or liquidating is also unacceptable, because the pension obligations will consume most, and perhaps all, of the company's assets. Yet, dissolution and bankruptcy may be the only choice, as has proven the case for many motor carriers during the past year.

It is, therefore, understandable why many carriers have simply refused to pay these huge pension obligations and have sued in the courts to prevent this unfair burden from being forced on them. Because new carriers refuse to join the plan, each withdrawal weakens the overall financial stability

of the plan and increases the potential pension obligations of the remaining carriers. This is not a healthy situation for either the trucking companies or their employees.

Impact of Motor Carrier Act of 1980

While the adverse impact on the trucking industry of the ERISA Amendments Act of 1980 was serious in itself, the passage of the Motor Carrier Act of 1980 made the situation far worse. With entry into the interstate trucking field eased to a mere "fit, willing and able" test, with past restrictions in carrier operating rights removed, and with regulation of individual carrier's competitive rates virtually eliminated, the environment for the trucking industry has completely changed.

Carriers that employ union workers now face sharp competition from new carriers that use nonunion workers at far lower wages and fringe benefits. These new carriers have no interest in joining the existing pension plans, along with unionized carriers. Many unionized carriers have found that this competition is too stiff to meet without major changes in their wage and benefit obligations to their workers. This has resulted in renegotiation of a new labor-management pact, with some easing of both wage and benefit levels; which will be helpful, but probably is too late for many carriers. Nor does it resolve the problem of the pension benefit obligations hanging over the heads of unionized carriers from the ERISA amendments of 1980, which are triggered if the carrier tries to become non-union.

Effect of ERISA on Investors' Interest

The bank lender is fundamentally a risk taker, but his decisions to lend are based on measured assessments of his ability to be repaid. He must be compensated for his risk through the interest rates agreed upon and through other considerations in the relationship, but his primary objective throughout his dealings must be the ultimate recovery of the funds he has placed at risk in the hands of borrowers.

The taking of risk involves two basic elements. The first element is the ability of borrowers to remain in business through the earning of a consistent and adequate return on their business activities. The second element is the maintenance of value in the assets financed, the preservation of an anticipated level of worth in the marketplace over a predictable time frame.

To the extent that uncertainties - especially those risks with which the lender has no familiarity and no experience in measuring - cloud the picture, the banker may be expected to respond by outright refusal to lend or by imposing more rigorous conditions on the lending commitment.

The potential impact of the 1980 ERISA amendments on motor carrier borrowers, both from the standpoint of ongoing economic viability and preservation of asset values, represents a significant element of uncertainty in the motor carrier financing picture. To illustrate: How does the existence of withdrawal liability affect a lender's credit analysis of a motor carrier? Will the Act cause lenders to adopt a more cautious stance toward the industry as a whole, restricting the availability of credit to trucking companies?

In my opinion, the 1980 amendments applicable to multi-employer pension plans have increased risk for an unsecured lender to a participant in such plans. Borrowers are being forced to make uneconomical operating decisions, because they are faced with large withdrawal liabilities should they liquidate or eliminate business segments. The ability of lenders to work with borrowers on an orderly liquidation plan, for the benefit of both borrower and lender, is severely constrained. Further, prospects for the acquisition of a participant in a multi-employer plan are virtually non-existent, eliminating one source of repayment to which lenders often look when faced with a troubled loan. Finally, the existence of large withdrawal liabilities impeded carriers from issuing equity to repay debt or strengthen their capital structures.

These changes are major. The old rules of the game no longer apply for lenders to the motor carrier industry. The lender's flexibility is greatly

reduced, and more conservative lending policies are almost sure to result.

Several of these points deserve elaboration. Perhaps the most important change brought about by the 1980 Act is a heightening of the significance attached to holding security. The ERISA withdrawal liability is an unsecured liability, so a lender must be secured to place himself ahead of the pension fund's claim. Before 1980, a bank lender, even though unsecured, was likely to be in a relatively strong position. The borrower's other unsecured liabilities were generally of manageable proportions and were clearly set out on the company's balance sheet. Now, an unsecured lender must realize that he stands on equal footing with pension liabilities which, though also unsecured, may be much larger than the bank's claims in a liquidation.

How will lenders respond to this new state of affairs? It seems clear that banks and other institutional lenders will be much less willing to lend on an unsecured basis to participants in multi-employer plans than they were previously. Also, lenders will no doubt more quickly exercise options to become secured in a credit that is initially unsecured, if they perceive a weakening of the borrower's financial condition. Lenders must be very sure to perfect their security interests before a complete or partial liquidation triggers an immediate unfunded pension claim by a multi-employer plan.

The critical importance of security to the motor carrier lender under the 1980 amendments is highlighted when we consider the impact of this Act on a lender's traditional expectations for repayment. Lenders typically look to a variety of sources to be repaid if a borrower's original plans for repaying a loan from cash flow do not materialize. Lenders have usually worked with troubled borrowers to develop alternative strategies, which might include discontinuing unprofitable segments of the business or planning an orderly liquidation of the company.

The 1980 Act, with its massive penalties for withdrawing from a pension plan, makes this kind of solution virtually impossible. Operators are forced in many cases to make uneconomical decisions to remain in business when liquidation is clearly preferable. As a result, the value of the company may be diminished when liquidation does occur. The value of equipment may deteriorate if operators cut back on repair and maintenance expenditures as a means of conserving cash.

It would appear, then, that the Act reduces the options available to a motor carrier -- and to the lender -- to extricate themselves from a deteriorating situation. Ultimately, lenders with good security interests may become quicker to force liquidations by accelerating their obligations, if they see a slow, protracted deterioration of the borrower as their alternative.

Acquisition of a troubled carrier by a stronger company, another of the lender's traditional sources of payment from a troubled situation, is also virtually precluded by the ERISA amendments. The potential withdrawal liability in this case must be either assumed by the purchaser (if the stock of the company is transferred) or by the seller (if the acquisition is structured as an asset sale). This has proved to be a barrier to numerous contemplated mergers and acquisitions.

The triggering of withdrawal liability by shutting down operations in one region prevents the rationalization of operations that characterizes most successful motor carrier mergers. The virtual freeze on acquisitions imposed by the Act thus increases the risk that lenders will be left to deal with troubled loans.

These concerns of lenders to motor carriers are shared by potential investors, who must recognize that their position in case of liquidation is even worse than a lender's under the new regulations. Therefore, the access of the trucking industry to new equity capital is severely constricted. This removes yet another of the alternate sources of repayment on which lenders traditionally relied.

What does all of this add up to for motor carriers and their lenders? Unless and until the Multi-Employer Pension Plan Amendments Act of 1980 is modified -- as in S. 1748 -- motor carriers should expect a tough-minded attitude from their lenders. This is a direct consequence of the lenders' greater exposure to risk under the Act.

New lending commitments may not be forthcoming in certain instances on any basis; existing loans are more likely to be secured from the outset; loans initially unsecured are likely to be put on a secured basis earlier than in the past; and loans may be more likely to be accelerated as a means of forcing liquidation. In addition to protecting their position with these measures, lenders must recognize that the 1980 Act will ultimately prove detrimental both to themselves and to their motor carrier borrowers.

Conclusion

Fortunately, S. 1748 will, if passed into law, resolve many of these serious problems by exempting from the withdrawal and plan termination provisions of Title IV of ERISA those employers who have negotiated only contribution levels in multi-employer pension plans. As pointed out in this statement, such Congressional action would be in the best interests of carriers, their employees, as well as investors in and lenders to trucking companies.

We believe that shippers that utilize trucking services also stand to benefit from passage of S. 1748, because at present they stand to lose from the heavy liability obligation hanging over the heads of carriers. This burden prevents these carriers from providing the best possible services at reasonable rates, obtaining adequate capital for plant and equipment modernization, and expanding services through acquisitions and mergers. Passage of S. 1748 should enable them to adjust operations, services, and rates in a more flexible manner -- thus improving their chances of competing in a buyers' market, yet remain viable.

We appreciate the opportunity to express the views of the Transportation Association of America on this important legislation and request that this statement be included in the formal record of hearings on S. 1748.

Senator NICKLES. Thank you, Mr. Pierce.

Mr. Miller.

Mr. MILLER. Thank you, Chairman Nickles. It is a pleasure to be here today, and I am here to testify in support of S. 1748. I am Larry Miller and I am here as the layman president of the Truck Renting & Leasing Association. All my competitors elected me to this tour of duty this year.

We represent 300 firms operating at approximately 2,000 locations throughout the United States. We own or lease approximately a million heavy trucks.

You have heard all of the horror stories, and I intend to focus a little bit upon the future, at least of our industry. One of the prime purposes of deregulation has been to enhance the ability of new entrants into the field, both companies as well as individuals.

As a direct result of the withdrawal liability embodied in MEPPA of 1980, trucking firms, truck leasing and rental firms alike are reluctant to expand at this point. New firms are reluctant or hesitant to enter into an industry where they think they will find themselves with some unknown, unfunded, unattributable, un-negotiated liability.

We fully support the objective of maintaining the health of a solid multiemployer pension plans. We feel like they are our funds, too, I guess, because we paid the bill for so many years.

However, without new entrants and new blood coming into the plans, there is going to be a severe disruption in the plans themselves. It is going to affect us all.

Just a couple of weeks ago, the Interstate Commerce Commission revised its rules to permit those of us in our industry to lease drivers. Historically, we have leased trucks. Now, we can lease the driver under single-source leasing.

In order to do that, you have to hire the driver. Generally those drivers are part of a union or a situation where they become union, and consequently are covered by a multiemployer pension plan.

It is my experience and the experience of the people that I represent today that no informed, aware truck lessor would subject himself voluntarily (hopefully not involuntarily) to the potential withdrawal liability found in the present law. It just is not going to happen.

In effect, the freedom that the Government granted on the one hand, deregulation and single source leasing, they have taken away on the other with the unwarranted withdrawal liability risk.

We are, by nature, a highly leveraged industry. To face the consequences of a footnote on our financial statements will be a serious barrier to future borrowing, and because I am told that the corporate veil can be pierced, many of our related or sister firms are affected adversely.

In the case of our own company, this potential problem is the biggest problem that we have faced in our 50 years of business. We have a leasing company that is a lease-rent operation. We also have a common carrier of bulk commodities.

The potential withdrawal liability for our firm is some \$10 million. We paid in somewhere over \$16 million through the years.

Senator NICKLES. Excuse me. Your company alone?

Mr. MILLER. Yes, our company alone.

Now, the consequences of this, Senator, are that on a compounded 8 percent basis they have about \$34 million of our money. We retired 10 men last year. We retired maybe a few over 50. There will be more to come.

But on a discounted value basis, they paid out about \$2½ million. If we did an act that triggered a potential withdrawal liability penalty, they could collect some \$45 million, and for those retirees to come, we estimate they might pay out \$15 or \$20 million.

As an example of one company, on our own account, you can see how unjust the impact of this law is.

Senator NICKLES. What would be your potential withdrawal liability?

Mr. MILLER. Our potential is approximately \$10 million in addition to all the funds that we paid in here to date that we negotiated for and agreed to pay and have paid in full.

Senator NICKLES. You have not received a notice or anything like that because you have not withdrawn?

Mr. MILLER. No, we have not triggered at this point, but the sister company that I referred to is suffering under the effects and we may very well face that.

Therefore, withdrawal liability makes it impractical to merge, to liquidate, to decertify if your employees so elect, to relocate facilities and to regulate your economies in other ways such as reduction of work force.

Now, this is not an industry that has a 50-year life cycle of facilities or engages in long-term contracts. Many times our contracts are 3 years, and should we lose a contract on the rebid, then we are subjecting ourselves to a many, many windows of triggering of liability.

So the effect of the foregoing is clear. Not only is business stopped cold in its track but it affects business and labor as well as the fund, and I submit the consumers of this country are not best served by the reduction of the open competition in the marketplace.

Thank you very much.

[The prepared statement of Mr. Miller follows:]

Subcommittee on Labor
of The Labor and Human Resources Committee
of The U.S. Senate

Testimony of Larry Miller

March 17, 1982

Mr. Chairman and members of the Subcommittee on Labor of the Senate Committee on Labor and Human Resources:

I am pleased to have this opportunity to testify in support of the objectives of S.1748.

My name is Larry Miller. I am the Executive Vice-President and Chief Operating Officer of the Ruan Companies of Des Moines, Iowa, and the President of the Truck Renting and Leasing Association (TRALA). My testimony today is presented on behalf of TRALA, which represents 300 firms, operating out of 2,000 locations throughout the United States. The membership of the association owns and leases over one million heavy trucks.

The Truck Renting and Leasing Association supports the basic premises of S.1748, namely, the return of multi-employer pension plans to defined-contribution plans rather than defined-benefit plans. This restoration of the original definition of multi-employer pension plans, together with the bill's elimination of the present withdrawal liability provisions, is in the best interests of the trucking industry, the truck renting and leasing industry,

the relevant unions, and the ultimate consumer. The law as it stands today has severely hampered the process of trucking deregulation, has deprived the truck leasing industry of the flexibility it needs to thrive, and has seriously undermined the credit-worthiness of industry members. The principles embodied in S.1748 would reverse these detriments and enable the truck renting and leasing industry to operate efficiently within the American marketplace.

In hearings on March 11, 1982, this subcommittee heard some of the many examples of unwarranted injury generated by the withdrawal-liability provisions of the Multi-Employer Pension Plan Amendments Act of September 26, 1980 (MPPAA). The members of this committee, I am sure, are aware of numerous other similar instances. In my testimony today, I intend to focus particularly on the concerns of the truck renting and leasing industry.

The Multi-Employer Pension Plan Amendments Act of 1980 has crippled the efforts of the truck renting and leasing industry to participate fully in the deregulation of the American trucking industry. One of the prime purposes of trucking deregulation has been to enhance the ability of new firms to enter the trucking industry and to enhance the ability of those firms already in the industry to conduct their operations in the most economically efficient manner possible. However, as a direct result of the withdrawal liability that is embodied in MPPAA, trucking firms and truck leasing and renting firms are unable to streamline their operations through mergers, acquisitions, relocations, liquidations, or other forms of business realignment. In

addition, new firms are extremely hesitant to enter an industry where they may find themselves subjected to a liability for which they never bargained, namely, the withdrawal liability under the MPPAA. This is true not only for the trucking industry as a whole, but also for the truck renting and leasing industry in particular.

We fully support the objective of maintaining the financial health and stability of multi-employer pension plans. However, as was pointed out in testimony before this subcommittee last week, without new entrants in the pension plans, disruption of multi-employer pension plans is already beginning. We believe that in the longer range, the very existence of these plans is severely threatened by the law as it stands today.

Let me explain some of the ways in which withdrawal liability and defined-benefit multi-employer pension plans are causing severe disruption to the truck renting and leasing industry.

Our industry is feeling the effects of deregulation quite strongly at the present time. One month ago, the Interstate Commerce Commission announced a revision of its rules with respect to "single-source leasing" (ICC Ex Parte No. MC-122 Sub No. 2). In the past, truck leasing firms have been prohibited from leasing trucks with drivers. Now, under the new rules, truck leasing firms are permitted to "single-source lease," that is, to lease both trucks and drivers together in interstate commerce. For our industry, single-source leasing is a significant outgrowth of trucking deregulation.

Unfortunately, MPPAA seriously inhibits truck lessors from engaging in single-source leasing. The reason is simple. In order to lease equipment with drivers, a lessor must employ the drivers. Those drivers which we employ are often members of a union with a multi-employer pension plan, and consequently are almost all covered by these plans. When a truck lessor employs such drivers, the lessor then becomes subject to potential withdrawal liability under MPPAA. It is my personal experience, and the experience of the industry as a whole, that no well-educated and informed truck lessor would voluntarily submit himself to the potential withdrawal liability of the present law. It is simply not reasonable for a businessman to risk the entire net worth of his business on the continuation of a single contract or of operations at a particular location, either of which may be a relatively small part of the firm's overall operations.

In effect, then, what the government has given with one hand -- deregulation and single-source leasing -- it has taken away with the other -- through withdrawal liability.

Single-source leasing is not the only avenue foreclosed by the MPPAA. Ours is, by nature, a highly leveraged industry. The necessity for including unfunded liability on financial statements has recently become a serious barrier to obtaining funds from lenders. Moreover, because withdrawal liability affects not only the lessor company itself but also all related companies, those related companies will also encounter difficulties in external borrowings. Truck renting and leasing firms are

frequently operated as part of a family of related firms. For example, the Ruan companies include not only Ruan Leasing Company, a lease/rent operation, but also Ruan Transport Corp., a common carrier of bulk commodities.

As you heard last week, withdrawal liability has made it impossible to merge firms, to bring new entrants into industry, to liquidate firms, to decertify where employees take that step, to relocate facilities, and to integrate economic activities in other respects. In short, virtually every benefit which flows from the deregulation of the trucking industry has been precluded by the presence of withdrawal liability and the definition of these pension plans as fixed-benefit plans. While deregulation was supposed to enhance competition in trucking, the MPPAA has halted that competition dead in its tracks.

Another way in which MPPAA unnecessarily injures the truck leasing industry is tied to this industry's exceptional need for flexibility. This is not an industry which builds fifty-year life cycle factories or engages in long-term contracts. Usually, lessors lease equipment on contracts tied to the life of that equipment. A typical contract may run for three years, for example, after which time the contract is subject to rebidding. In the event a company loses such a contract to a competitor, the losing company will have a diminished need for mechanics and other service employees. If the company were engaged in single-source leasing, its need for drivers would also be diminished. When those mechanics (and drivers) lose their jobs because of the pressures of competition, withdrawal liability may well be

triggered. This problem is equally acute in short-term daily truck rental contracts and in contracts for maintenance as well.

In effect, then, withdrawal liability becomes a factor which a lessor must include in his calculations of the cost and benefits of a given contract. Because of the magnitude of withdrawal liability, not only for the lessor firm but also for its related and sister firms, the role of potential withdrawal liability in drafting contract proposals is magnified far beyond reasonable proportions. In short, MPPAA robs the truck leasing industry of the flexibility that is essential to its strength.

The effect of the foregoing is clear. Not only is business stopped cold, but also the interests of the multi-employer pension plans themselves are ill-served. New entrants in an industry will uniformly refuse to enter into multi-employer pension plans, and in the long run those plans must lose membership. Thus both business and labor are severely impacted by the present law. The effects of MPPAA also injure consumers. The premise of trucking deregulation has been that consumers are best served by open competition in the market place. However, that open competition cannot proceed because of the current multi-employer pension plan law. Hence consumers are unable to enjoy the benefits of trucking deregulation.

In addition to the injuries inflicted directly on the truck leasing industry, our clientele is restricted by the withdrawal liability provisions of the MPPAA. Prospective clients who want to take advantage of deregulation through the leasing of customized fleets will take a second look before utilizing their

assets in a way that will subject them to a contingent liability equal to their net worth. Moreover, the leasing industry is foreclosed from offering these clients trucks with drivers (i.e., to provide single-source services) for reasons I mentioned previously. Potential lessees are generally unaware of the withdrawal liability under the MPPAA, because most of these firms are under other forms of retirement plans in their principal lines of business. They are generally not aware of the withdrawal liability affecting their relatively small ancillary trucking operations.

It is therefore our position that the concept of defined benefits and the concept of withdrawal liability must be written out of the MPPAA. We believe this to be in the best interests of the industry, of the unions and pension plans, and of consumers.

Senator NICKLES. Thank you very much, Mr. Miller. I appreciate your comments.

Mr. Pierce, I appreciate your comments concerning the financial impact. We have not had testimony before this.

Mr. Pritzker, just one quick question. I am particularly appreciative of the suggestions that you had made particularly concerning the idea that the premiums should be somewhat risk related. I think that is an interesting proposal that has been suggested in the past and I appreciate your throwing it up for our consideration.

I also appreciate your other recommendation that said there would not be a withdrawal liability if assets exceeded present value of vested liabilities.

You had one other suggestion. I was trying to think what it was.

Mr. PRITZKER. That as an alternative, that if an employer withdrew from a plan that, unless the plan were in reorganization or went into reorganization within 5 years following the withdrawal, that there also, under that circumstance, would not be employer withdrawal liability.

Senator NICKLES. If an employer withdrew from a multiemployer plan and if that plan did not go into reorganization, bankruptcy, or anything else that there would be no liability?

Mr. PRITZKER. Yes, sir, and again, that seems to us also to be an incentive to the trustees to keep a well-managed plan well managed for any period of time.

Senator NICKLES. Or would it be the reverse, where they might accelerate the problem to be sure that they could get it, if somebody withdrew from the plan?

Mr. PRITZKER. Well, I think the question is the remaining employers certainly do not want to be stuck, as somebody said, holding the bag, or the last-man-out syndrome.

The question, however, is, if you are going to continue to get employers to remain in the plan and especially to bring new employers in the plan, new employers are not going to come into a plan for which they are going to pay x number of dollars of unknown liabilities. As far as the employers now in the plan, if the footnotes to the accounting statement show that they have a contingent liability, these employers will seek to withdraw from the plan.

The employers who are in the fund, in an industry which is fiercely competitive, will not be able to go out and acquire the capital necessary to put in new equipment if employer withdrawal liability is listed on their books as a contingent liability and so the employers in the fund will be penalized both because they will not be able to get outside financing and because new employers, this new blood, referred to by an earlier speaker, will not be brought into the fund.

And, of course, all of those things, in addition to penalizing the employers, will also penalize the union because their members will suffer unemployment if employers cannot get the financing to put in the new equipment if they cannot bargain with new employers to bring them into the plan.

Senator NICKLES. Thank you very much, gentlemen. We appreciate your input.

Our last and final panel today, we have James Hacking, representing the National Retired Teachers Association and the American Association of Retired Persons.

We welcome you again before our subcommittee. We appreciate your input.

STATEMENT OF JAMES M. HACKING, ASSISTANT LEGISLATIVE COUNSEL, WASHINGTON, D.C., NATIONAL RETIRED TEACHERS ASSOCIATION AND AMERICAN ASSOCIATION OF RETIRED PERSONS, ACCOMPANIED BY STEVE ZALEZNICK, LEGISLATIVE REPRESENTATIVE

Mr. HACKING. Thank you, Mr. Chairman.

Accompanying me is one of our legislative representatives Mr. Steve Zalenick.

The associations we represent have a combined membership that is now in excess of 13,300,000 persons age 55 and older. These persons, most of whom are retirees, have a great interest in the benefit guarantee protections that are available now under ERISA.

As time has passed this morning, I have continued to whittle down what was merely a summary of the associations' statement. I shall just proceed with what is left of that and submit the associations' full statement for the record.

Senator NICKLES. We certainly thank you.

Mr. HACKING. The imposition of withdrawal liability under the 1980 legislation may be overly punitive as has been asserted and described here this morning.

But we do not feel that S. 1748 is the correct answer to the problem. Instead we think the subcommittee should look into ways to modify the withdrawal liability provisions in a manner which protects benefit guarantees and yet encourages the growth of multiemployer plans.

It is important to note that the current scheme of benefit guarantees already entails large risks for retirees. In the first instance, financially troubled plans can enter reorganization, a process that allows a plan to reduce benefit levels to the guaranteed level.

The PBGC guaranteed level only includes benefits that have been in existence for 5 years.

In addition, current law complicates the benefit guarantee process itself by holding out the distinct possibility that guarantees could themselves be lowered merely as a result of congressional inaction.

Benefit guarantee reductions, we think, can be especially harmful to retirees because retirees rely on their pensions to meet basic living expenses.

In addition, it is important to point out that retirees have very little, if any at all, say in their plans decisionmaking process since they are not represented among plan trustees and they are not direct participants in the collective-bargaining process.

Under these circumstances, the system of benefit guarantees takes on added value to retirees.

It seems clear from the record that the present withdrawal liability provisions for multiemployer plans are, in some cases, excessive, burdensome, and not in the best interest of employers or plan participants.

We, therefore, believe that these rules can, and perhaps, should be modified. However, in order to make effective decisions as to how these rules should be modified, we think it would be extremely helpful to determine whether withdrawal liability in any form would be acceptable or whether funding requirements alone would be sufficient to make employers pay their fair share in the future.

Also, a determination must be made as to whether the risk of insolvency for multiemployer plans is increased by lessening withdrawal liability and whether this risk can be covered by the PBGC.

While it is difficult to predict whether potential changes in withdrawal liability would increase or decrease the risk to the PBGC, we hope that Congress will show a willingness to protect participants' benefits.

If changes in withdrawal liability cause higher expenses for the insurance program, then it seems to us logical that premiums are going to have to be raised. The only other option is to increase the risk of benefit loss to plan participants and beneficiaries. That would be unacceptable.

Additionally, if contemplated changes increase the risk of plan insolvency, the possibility of increasing the benefit guarantee level should also be explored.

We hope that the final product of this subcommittee will be legislation which encourages employers to participate in multiemployer plans while also allowing the PBGC to be actively involved in the process of protecting pension benefits for workers and retirees.

We hope the subcommittee will provide our organizations with the opportunity to cooperate in an effort to develop a solution to the current problem that is both effective and balanced in its treatment of employers, plans, participants, and beneficiaries.

That concludes my statement, Mr. Chairman, I appreciate having had the opportunity to present these remarks.

[The prepared statement of Mr. Hacking follows:]

STATEMENT OF THE NATIONAL RETIRED TEACHERS ASSOCIATION AND THE AMERICAN
ASSOCIATION OF RETIRED PERSONS

I. Introduction

The National Retired Teachers Association and the American Association of Retired Persons are pleased to have the opportunity to appear before the Labor Subcommittee today to testify on S. 1748 and other issues affecting multiemployer pension plans. We realize that problems have been created with the passage of the 1980 Multiemployer Pension Plan Amendments Act. Resolving these difficulties would help the long-term viability of the multiemployer pension industry by encouraging participating employers to stay in their plans and new ones to join.

Although employers must be willing to participate in multi-employer plans for the plans to be of any value to workers and retirees, special attention should also be given to the interest of the approximately eight million multiemployer plan participants. Retirees in particular would be in an extremely vulnerable situation if their retirement benefits were cut off or reduced. Every effort must be made to ensure that the benefits they were promised continue to be paid to them. As the Subcommittee reviews potential remedies to the withdrawal liability problem, we urge you to determine how any alternative fits into a framework for ensuring that plan participants receive the benefits they are owed.

II. S. 1748 Could Jeopardize the Pension Benefits of Retirees

S. 1748 would eliminate from the definition of multiemployer plan in title IV of ERISA (the pension insurance title) any collectively bargained plan in which the collective bargaining agreement fixed contributions rates but not benefits.

This change would limit most employers' withdrawal liability to the level of contributions that were called for in the agreement. It could also eliminate the plans' ability to pay participants and retirees the benefits that were promised them. Most importantly, under S. 1748, promised benefits would no longer be insured by the Pension Benefit Guaranty Corporation.

Retirees and older workers would be the first to lose under the scenario designed by S. 1748. It would be possible for a plan to reduce its benefits to make up for a shortfall in funding. While younger workers could also lose a part of the pension that is owed them, they would at least be aware of the situation prior to making a retirement decision. However, they still would have worked for a significant number of years with the expectation that they would receive a pension that would no longer be coming to them.

The imposition of withdrawal liability under the Multiemployer Pension Plan Amendments Act may be overly punitive. However, S. 1748 shifts the potential harm onto an even more vulnerable population. We do not think that is fair, and we do not believe this remedy is necessary. Instead, we believe this Subcommittee should be looking into ways to modify the withdrawal liability provisions in a manner which protects benefit guarantees and encourages the growth of multiemployer plans: -

In assessing the impact of any changes in withdrawal liability, it is necessary to determine how these changes fit into a benefit guarantee system. Even under present law, the retiree can suffer a serious loss if his or her plan gets into financial trouble. We hope that any changes considered by the Subcommittee will strengthen the multiemployer plans and the multiemployer insurance system rather than increasing the possibility of benefit losses.

III. Retirees and Workers Can Suffer Significant Losses Under Present Statutory Provisions

The Multiemployer Pension Plan Amendments Act of 1980 was created in an effort to prevent a large number of plans from terminating and turning their liabilities over to the Pension Benefit Guaranty Corporation. As a part of the Act, Congress created a system of withdrawal liability for many employers who leave their plans. Although this system has received much of the public attention since the passage of the Act, the Act also contains provisions which significantly affect workers and retirees. These sections determine the size of the benefit that the retiree receives if a plan gets into financial trouble. In this case, the benefit is likely to decline.

In the first instance, a problem plan can enter "reorganization," and under ERISA Sec. 4244A this plan may reduce the benefits of participants. The "reorganization" process allows the plan to reduce benefits to the guarantee level. The guarantee level, which is all that a participant can receive from the PBGC, only

includes benefits that have been in existence for at least five years. The guarantee level is further reduced by a statutory formula set out in ERISA Sec. 4022A, which would cause major reductions in the benefits of many retirees participating in insolvent plans.

Current law complicates the benefit guarantee process by holding out the possibility that guarantees could be lowered further by Congress' inaction. The Act (Sec.4022A) requires the PBGC to conduct periodic reviews of the sufficiency of the premiums that are being paid to the insurance system. If the premiums are inadequate, the PBGC will have to publish a schedule of revised benefit guarantees which reflect the lack of premiums. The PBGC would also provide a new premium schedule that could pay for the benefits, and as a third alternative it would chart a compromise position that would lower benefit guarantees and raise premiums. If Congress fails to select a preference, the reduced guarantee schedule will automatically go into effect.

Benefit guarantee reductions can be especially harmful to retirees because they rely on their pension to meet basic living expenses. Retirees bear an additional risk with troubled plans because they are totally removed from their plans' decision-making process. The benefits under the plans are set by trustees who represent labor and management, and at times they are set through the collective bargaining process. Since the retirees have no authority to affect these processes, a system of benefit guarantees takes on added value.

Given the possibility that large reductions in benefits for workers and retirees can occur, every effort should be made to keep the multiemployer plans healthy and to maintain strong guarantee provisions. While the economy is probably the most harmful factor for multiemployer plans today, we feel that the 1980 Act also has created problems. S.1748 is not the proper answer to these problems, but we believe the Subcommittee could take other steps to alleviate the burdens placed on some employers by the Act.

IV. Changes in Withdrawal Liability Are Needed

It is clear from the record being developed by this Subcommittee that the present withdrawal liability provisions for multiemployer plans are in some cases excessive, burdensome and not in the best interest of employers or plan participants. We therefore believe that these rules could be modified. In order to make effective decisions, it would be helpful to determine whether withdrawal liability of any form would be acceptable or whether funding requirements alone are sufficient to make employers pay their fair share in the future. Also, a determination must be made of whether the risk of insolvency for multiemployer plans is increased by lessening withdrawal liability and whether this risk can be covered by the PBGC.

We hope that the Subcommittee and other interested parties will take time to study the causes of the problems created by the 1980 Act. Rules must be devised to encourage employers to pay their fair share of the cost of realistically funding the plan. These rules should be designed to protect the plans' ability to pay benefits. They should not be motivated by the desire to lock-in union employment. It is possible that a limited concept of withdrawal liability should apply for liabilities incurred in the future. However, until a complete analysis of the impact of withdrawal liability is undertaken, conclusive decisions are difficult to make.

V. Recommendations

Because it abandons important benefit guarantee protections for workers and retirees, the Associations are strongly opposed to S. 1748. At the same time we realize that the present situation should be changed in order to secure the well-being of multiemployer pension plans.

If a fair rewrite of the withdrawal liability provisions of the Multiemployer Act can be created by the Subcommittee, the Associations would support the effort. However, comparable efforts must be made to orient the benefit guarantee provisions toward these changes. While it is difficult to predict whether potential changes in withdrawal liability would increase or decrease the risk to the PBGC, Congress must show a willingness to protect participants' benefits.

If changes in withdrawal liability cause higher expenses for the insurance program, premiums must be raised. We do not feel that insurance premium payments under current law (Sec. 4006 phases in increased premiums until they equal \$2.60 per participant per year by the late 1980s) are at all excessive. Additionally, if contemplated changes do increase the risk of plan insolvency, the possibility of increasing the benefit guarantee level should also be explored by this Subcommittee.

We believe that any legislation designed to help multi-employer plans and participants should reverse current law and allow for higher premiums rather than lower guarantees in the absence of Congressional action. Congress must protect benefits unless the expense is prohibitive. The final product of this Subcommittee should be legislation which encourages employers to participate in multiemployer plans while it allows the PBGC to be actively involved in the process of protecting pension benefits for workers and retirees.

Senator NICKLES. Thank you very much, Mr. Hacking. We appreciate your offer of assistance and we solicit your assistance in working with our subcommittee and other interested parties to try and see if we cannot come up with something that is going to insure the viability and assurance that these retirements and benefits are going to be there when they retire.

I think we have had ample testimony not just today but really over the last many meetings we have had on ERISA, both in S. 1541 and S. 1748, that in some cases the law as it is presently stated leaves something to be desired, and has had a negative effect in many cases.

We will work with you and other interested parties over the next period of weeks to see if we cannot come up with something to insure that those pension funds will be there and to insure that the changes can be made to assist business and unions and primarily the employees themselves.

It is our intent to mark up the ERISA legislation in the latter part of April. Our subcommittee has completed 6 days of hearings on ERISA. We will keep the record open until April 1 and we will be submitting additional questions to you.

Again, I wish to thank you.

At this point I order printed all statements of those who could not attend and other pertinent material submitted for the record.

[The material referred to follows:]

ABC

ASSOCIATION OF BITUMINOUS CONTRACTORS

2020 K STREET, N.W., SUITE 800 • WASHINGTON, D.C. 20006 • TELEPHONE (202) 785-4440

March 30, 1982

OFFICERS

President

ELMO J. HURST
J.O. Lively Construction Co.
P.O. Box 338
Glen White, W. Va. 25849

Vice President

JOHN J. COWIN
Cowin & Co., Inc.
One S.W. 18th St.
Birmingham, Ala. 35211

Treasurer

RICHARD V. RAY
Ohio-Atlas Construction Co.
P.O. Box 2482
Weirton, W. Va. 26062

Secretary-General Counsel

WILLIAM H. HOWE, Esq.
Loomis, Owen, Fellman & Howe
2020 K Street, N.W.
Washington, D.C. 20006

Executive Committee Member

DONALD DEVORRIS
Blair Electric Service Co.
526 North 4th Street
Bellwood, Pa. 16617

Senator Don Nickles
Chairman
Subcommittee on Labor
A-609 Immigration Building
Washington, D. C. 20510

Re: S.1748

Dear Senator Nickles:

The Association of Bituminous Contractors submits the following comments on S.1748, the Multiemployer Pension Plan Stabilization Act of 1981, and requests that they be made part of the record.

Construction Participation in the UMWA
1974 Pension Plan

The Association of Bituminous Contractors (ABC) is an association of 350 independent contractors which specialize in designing and building coal mines and coal handling and preparation facilities. The Association negotiates a nationwide collective bargaining agreement with the United Mine Workers of America known as the National Coal Mine Construction Agreement. Under this Agreement, the Association's member companies, as well as hundreds of other contractors which are independently signatory to the same Agreement, contribute to the UMWA 1974 Pension Plan.

The UMWA 1974 Pension Plan is a multiemployer pension plan negotiated by the United Mine Workers and the Bituminous Coal Operators' Association (BCOA). It was established in 1974 to provide pension benefits to coal miners who retire after December 31, 1975, and, in combination with the UMWA 1950 Pension Plan (which provides benefits to coal miners who retired on or before December 31, 1975), is a continuation of the UMWA Welfare and Retirement Fund of 1950.

Historically, negotiations between ABC and the United Mine Workers for an agreement covering coal mine construction workers have occurred simultaneously with negotiations between

Senator Don Nickles
March 30, 1982
Page Two

the BCOA and the United Mine Workers for an agreement covering coal miners. Although the negotiations and eventual agreements are separate and independent, the wage and benefit package negotiated in the National Bituminous Coal Wage Agreement is usually presented as a demand by the Union, and serves as the basis for the wage and benefit package in the National Coal Mine Construction Agreement. This was true of the UMWA 1974 Pension Plan.

After the BCOA and the Mine Workers negotiated the terms of the UMWA 1974 Pension Plan, the Union presented it to ABC, with the acquiescence of the BCOA, demanded that construction contractors participate on the same basis and contribute at the same hourly rate as coal companies. Even though it was evident, because of differences between construction and mining, that use of the same contribution rate which was negotiated for mining would be more than sufficient to fund any liabilities for benefits resulting from construction participation, ABC eventually agreed to participate in the Plan on the same basis as the coal companies. Coal mine construction employers had not previously participated in the UMWA Welfare and Retirement Fund of 1950 and are not required to make any contributions to the UMWA 1950 Pension Plan.

Since 1974, under the terms of the three National Coal Mine Construction Agreements which were concluded in 1974, 1978, and 1981, construction contractors have participated in the UMWA 1974 Pension Plan. On each occasion, increased benefit levels and contribution rates for the 1974 Pension Plan have been negotiated by the BCOA and the United Mine Workers, and then a demand has been made to ABC to accept the same terms. ABC has never had a real opportunity to negotiate different terms, although in the 1981 negotiations, the Association refused to agree to continued participation until both the BCOA and the Union agreed to segregate construction worker participation in the Plan for purposes of computing and allocating withdrawal liability. Construction companies have never had a representative on the board of trustees of the UMWA 1974 Pension Plan, and it was not until 1981 that the ABC was accorded a limited right to have an observer present at meetings of the trustees.

Impact of the MPPAA

The withdrawal liability provisions of the Multiemployer Pension Plan Amendments Act of 1980 have imposed unfair and unreasonable burdens on construction contractors. As a result of the MPPAA, many construction contractors will be charged for withdrawal liabilities, sometimes in excess of their net worths, if they sell their businesses, cease covered operations, or simply

Senator Don Nickles
March 30, 1982
Page Three

are unable to find work which is required to be performed under the National Coal Mine Construction Agreement. The latter is a particularly troublesome problem because nationwide an increasingly smaller percentage of coal mine construction work is being performed under UMWA jurisdiction, and even coal mine operators with UMWA organized mines are no longer obligated to require that construction work at such mines be performed under UMWA jurisdiction. Thus, contractors may be forced into withdrawal simply because work is not available for which contributions to the Plan are required.

Furthermore, the special construction rules provided in the MPPAA are not applicable, and would offer no real help even if they were adopted. The UMWA 1974 Pension Plan is not a plan which covers primarily employees in the building and construction industry, so that the special construction rules do not apply. The Plan covers primarily employees in the coal mining industry, and only a small percentage of participants happen to be construction workers. Contributions from construction contractors amount to less than five percent of total contributions to the Plan.

Even if the trustees were to adopt the special construction rules they would be of no real benefit except to employers which choose to go out of the coal mine construction business. This is because the National Coal Mine Construction Agreement is national rather than regional in scope, so that a noncontributing employer would still be performing work within the jurisdiction of the plan as long as it performed coal mine construction anywhere in the United States.

Construction Participation Has Not Created
An Unfunded Vested Benefits Liability

Subjecting construction contractors to withdrawal liability because of their participation in the UMWA 1974 Pension Plan is inequitable because construction participation has not contributed to the Plan's present unfunded vested benefits liability. Although, when calculated on the basis of the Plan's ongoing funding assumptions, the UMWA 1974 Pension Plan has a substantial unfunded vested benefits liability, available evidence indicates that no portion of this liability is the result of construction worker participation. Assets resulting from construction contractor contributions are more than sufficient to pay the vested benefits of construction worker participants. Thus, as long as withdrawal liability for construction contractors is computed and collected on the same basis as it is for coal companies, the MPPAA requires construction contractors to subsidize a liability which they did not help create.

Senator Don Nickles
March 30, 1982
Page Four

Imposing this withdrawal liability on construction contractors is additionally inequitable because of the nature of the coal mine construction industry. The coal mine construction industry is a highly competitive industry with contractors moving in and out of certain types of work for a variety of reasons. Even when a contractor moves out, however, its employees may remain in the industry by going to work for another contractor. The National Coal Mine Construction Agreement, in fact, provides a procedure whereby employees have an opportunity to stay in UMWA coal mine construction with different employers. These other employers may then assume obligations to contribute to the Plan, so that aggregate contributions remain at a level which is sufficient to fund the Plan under actuarial projections, even though various individual employers may have withdrawn. Under such circumstances, withdrawal liability payments are a windfall to the Plan.

Finally, because the UMWA 1974 Pension Plan is considered a continuation of the UMWA Welfare and Retirement Fund of 1950 (which was the only plan to which Section 404(c) of the Internal Revenue Code ever applied), under Section 4211(d)(2) of ERISA, added by Section 104(2) of the MPPAA, the de minimis rule, and twenty year cap on withdrawal liability payments do not apply to withdrawals from the Plan. Thus, contractors which perform even some small amount of work under the National Coal Mine Construction Agreement are subject to potential withdrawal liability.

S.1748

In his floor statement introducing S.1748, Senator Hatch identified the basic problems which the MPPAA has created. Although S.1748 is an earnest attempt to try to correct these problems, it is difficult to see how simply exempting so-called "defined contribution plans" will do so, while at the same time preserving the basic purpose of the Act which is to assure that plans will be sufficiently funded to pay benefits which have been promised.

Exempting so-called "defined contribution plans" may be a simple way to provide relief to certain industries whose plans would fit the definition, but it is not necessarily a rational or fair solution to the problems which the MPPAA has created. There are "defined contribution plans" with unfunded vested benefits liabilities, and it is naive to assume that unions and employers which negotiate such plans do not do so with the

Senator Don Nickles
 March 30, 1982
 Page Five

understanding that continued contributions will be required to pay future benefits. Just like other plans, many "defined contribution plans" call for a long term funding schedule, and simply because benefit amounts may not be specifically set forth in a plan does not mean that the negotiators do not have a good idea what benefits will be provided, or that employees do not have an expectation of receiving those benefits.

Contrariwise, the inequities which the MPPAA has created are not limited to "defined contribution plans." The plight of construction contractors which participate in the UMWA 1974 Pension Plan is a case in point. Under the sweeping rules of the MPPAA these contractors are required to pay for an unfunded vested benefits liability which they did not create. If amendments are to be made to the MPPAA to redress inequities, situations such as this should not be overlooked in favor of a simple definitional solution.

Amendments To The MPPAA Are Necessary

Recognizing that the MPPAA has created problems and inequities, the Association of Bituminous Contractors suggests the following three changes which it feels would alleviate hardship without undermining the purpose of the Act:

(1) Amend the Act to provide that no withdrawal liability will be assessed as long as aggregate contributions remain within ninety percent of contributions necessary to meet the plan's funding schedule; and if aggregate contributions drop below ninety percent, base liability only on a pro rata portion of the differential. In this way employers would be able to withdraw as long as the plan remains healthy from an overall standpoint.

(2) Amend the Act to provide that withdrawal liability be calculated by a direct attribution method. This method may be the most difficult for a plan to administer, but it is the most equitable. Under this method an employer would be responsible only for the liability it creates, and would not have to subsidize other employers.

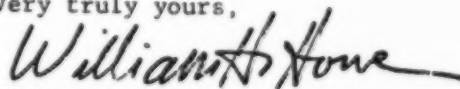
(3) Amend the Act to provide that withdrawal liability be recognized as a fixed liability at the time it is assessed, and require that the amount of liability be calculated using actuarial assumptions which are appropriate for pricing such a liability under prevalent market conditions. In other words,

Senator Don Nickles
March 30, 1982
Page Six

require plans to compute withdrawal liability using actuarial assumptions which may be different than those used for long range funding. Many plans use very conservative assumptions for funding purposes, which when applied to calculate withdrawal liability result in unreasonably high amounts. When withdrawal occurs, an employer's liability can be determined as a fixed amount, and should be priced using actuarial assumptions, such as interest rates, which are appropriate under market conditions at that time.

The Association appreciates the opportunity to submit these comments and hopes they will be helpful.

Very truly yours,

A handwritten signature in dark ink, appearing to read "William H. Howe". The signature is fluid and cursive, with a long horizontal stroke at the end.

William H. Howe
Secretary/General Counsel

WHH/nmc

STATEMENT ON
MULTIEMPLOYER PENSION PLAN WITHDRAWAL LIABILITY
BY THE
MILK INDUSTRY FOUNDATION
AND THE
INTERNATIONAL ASSOCIATION OF ICE CREAM MANUFACTURERS

SUBCOMMITTEE ON LABOR
SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES

MARCH 30, 1982

The Milk Industry Foundation (MIF) and the International Association of Ice Cream Manufacturers (IAICM) submit this testimony concerning multiemployer pension plan withdrawal liability. The MIF is a trade association of 350 processors and distributors of fluid milk and fluid milk products. Its members operate 800 plants and process about three-fourths of the total fluid milk consumed in the United States. The IAICM is a trade association of ice cream manufacturers representing 250 companies that operate 600 plants and manufacture about 80 percent of the ice cream and related products consumed in the United States.

The MIF and the IAICM (the Associations) favor the enactment of S. 1748, the Multiemployer Pension Plan Stabilization Act. The Associations believe that present multiemployer pension plan withdrawal liability provisions, enacted as part of the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), are both counterproductive and grossly unfair.

Rather than protecting collectively-bargained multiemployer pension plans, MPPAA withdrawal liability has discouraged new membership in the plans and thereby weakened their financial condition. The withdrawal liability provisions have also weakened multiemployer plans by encouraging gradual withdrawals through reductions in unionized work forces and by undermining the financial viability of the contributing employers.

The Associations concur with the many witnesses who have testified that MPPAA withdrawal liability is having a devastating effect on American business. The prospect of virtually unlimited withdrawal liability is seriously damaging the ability of many of our members to obtain routine financing, and is blocking or disrupting their ability to engage in corporate transactions -- such as dissolutions, plant relocations, sales and mergers -- that are essential to the effective functioning of the capital markets. The impact on small and family-owned businesses is especially harsh.

Moreover, the MPPAA's withdrawal liability provisions are utterly unfair and appear to lack any rational relationship to the problem of financially-unsound pension plans to which they were addressed. Multiemployer plans are cost-sharing devices that are designed in the expectation that employers will regularly join and leave. Participating

employers agree in arm's-length negotiations with the union only to pay fixed contributions to the plan, not to assume any obligation for particular benefits. Benefits are determined by trustees who are fiduciaries to the employee beneficiaries. It is their duty (not the employers') to be certain that benefits are set at a level that can be fully funded, over a period of years, out of employer contributions.

Most funds are financially sound, and the fact that a fund has unfunded vested benefits does not mean that the fund is in the slightest difficulty. Unfunded vested benefits result from benefit increases, investment gains and losses, admissions of new groups of employees with credit for past employment, changes in vesting rules, and other causes -- all of which are completely outside an individual employer's control. The MPPAA's requirement that a withdrawing employer pay into the fund an arbitrarily-calculated share of the fund's total unfunded vested benefits -- most of which relate to employees of other firms -- overturns the contractual agreement between the employer and the union, confers a windfall on the fund and the employers that continue to contribute to it, and allows the trustees to increase benefit levels and thereby further increase the fund's unfunded vested benefits. It is essentially a gratuitous tax on actions such as union decertifications,

corporate relocations, deaths of sole entrepreneurs, and business failures that are in no way undertaken to avoid pension responsibilities -- and a tax that does not even provide any assurance that it will be applied to increase the funded status of pension plans.

The Associations believe that the best solution to these serious and growing problems is the elimination of withdrawal liability. S. 1748 would achieve that result, and we support the bill. The Associations recognize, however, that it is desirable to retain an insurance scheme under which all multiemployer plans contribute premiums that are available to pay the unfunded vested benefit obligations of any multiemployer plan that may become insolvent. The Associations also recognize that if there were convincing evidence that a reasonable level of insurance premiums will not cover the unfunded vested benefit obligations of insolvent plans, then it might be desirable to require the employers involved in financially-weak plans to bear a share of the plans' unfunded vested benefit obligations. The Associations are not aware that any such evidence exists. However, if some form of employer liability were clearly demonstrated to be necessary, the Associations would urge that such a program be carefully designed to be fair and equitable, and to avoid the counterproductive results of the present MPPAA withdrawal liability

scheme. Specifically, any program should contain at least the following features:

1. Liability should not be imposed on employers that cease plan contributions for perfectly legitimate business reasons that are unrelated to avoiding potential liability (e.g., arm's-length sales, bona fide business liquidations, plant relocations).
2. Employers should not be responsible for unfunded vested benefits created by plan trustees prior to the enactment of any new statute.
3. Employers must not be held responsible for benefits in excess of those attributable to their own present and former employees.
4. Liability should not be imposed where an employer provides alternative pension coverage assuring its employees benefits equal to their vested benefits under the multiemployer plan.
5. Employer liability should not override existing arm's-length collective bargaining agreements, and employers should have a meaningful opportunity to limit their exposure to liability through the collective bargaining process.
6. Employer liability should be imposed only where a multiemployer plan is in genuine financial distress, and only where other measures -- including accelerated funding, PBGC financial assistance, and reasonable reductions of benefits (particularly those that are clearly imprudent and those that have only recently been increased) -- cannot restore the financial stability of the plan.

7. There should be a reasonable limitation on the magnitude of any particular employer's liability, such as the 30 percent net worth limitation that applied to multiemployer plan terminations prior to the MPPAA and continues to apply to single-employer plan terminations today.
8. A plan's unfunded vested benefits should be calculated by a government agency or other impartial factfinder, and the actuarial assumptions used in the calculation should either be adopted by a neutral public agency after notice and comment or be subject to a test of reasonableness in which the party seeking to impose the liability -- not the employer -- has the burden of proof.
9. If employers are to be held accountable for the unfunded vested benefits of a plan, they must either be given control over plan decisions concerning benefits, funding, investment policies and other crucial matters, or be given the power to reverse imprudent trustee decisions in these areas, together with the right to obtain full and timely reports of the trustees' actions.
10. Future increases in unfunded vested benefits should be limited by imposing more stringent funding standards for new benefits and by permitting a plan to increase benefits only when its current financial condition is sound and unfunded vested benefits are minimal.
11. Multiemployer plans should be encouraged, through a tax credit or similar mechanism, to convert into individual account plans for purposes of providing benefits for future service, thereby making the insurance program inapplicable to future benefits.

March 30, 1982

TESTIMONY OF JERRY LEATHAM, PRESIDENT,
AMERICAN WAREHOUSEMEN'S ASSOCIATION

before the

SENATE LABOR SUBCOMMITTEE HEARINGS ON S. 1748,
MULTI-EMPLOYER STABILIZATION ACT OF 1981

Mr. Chairman: The American Warehousemen's Association is pleased to have this opportunity to testify on S. 1748 and the effects of the Multi-Employer Pension Plan Amendments Act of 1980 (MPPAA). The members of AWA wish to thank Senator Nickles for holding these hearings and to commend Senator Hatch and the co-sponsors of S.1748.

The members of the American Warehousemen's Association are owners and operators of public warehouses. The primary functions of the public warehousemen are the handling, processing and distribution of goods for commercial and industrial accounts. This industry is mainly comprised of privately owned companies who operate either a single warehouse or a limited number of warehouses.

The public warehouse constitutes an integral part of this country's distribution system, providing service to major corporations as well as small companies who would be unable to sell nationwide unless they utilized public warehousing. The range of services provided by the public warehouse includes recooperage, pallet exchange, local delivery, interstate delivery, packaging/assembly and consolidation.

Many public warehousemen participate in one or more multi-employer plans. The majority participate in either the Western Conference Fund or the Central States, Southeast and Southwest Areas Fund. The exemption provided in the 1980 Act for the trucking and public warehousing industries has proved to be unworkable. For these reasons, AWA is an interested participant in these hearings and stands ready to work with the Committee members and staff to work out a satisfactory solution to this major crisis facing employers, employees, and multi-employer pension plans alike.

* * * * *

I would like to share with you a statement made to me in a letter from a member of AWA which reflects the sentiments of the entire Association:

"By this Act of Congress, the United States Government has interfered in a contract between two people. The terms are retroactive to a time long before I purchased the company. I believe the Act to be unconstitutional, but certainly don't have the resources to challenge."

The Multi-Employer Pension Plan Amendments Act of 1980 is a well-intended, but ill-conceived effort to protect multi-employer plans. MPPAA created a provision which requires employers withdrawing from a multi-employer fund to pay an assessed liability for their share of the unfunded vested liabilities of the fund. This liability can equal 100% of the company's net worth!

Now, with pension funds determining the actual liability of fund participants, it is clear that neither the Congress, employers nor the funds realized the potentially devastating impact of the withdrawal liability provision. The liability of a public warehouseman in Illinois was estimated to be \$1,670,000, "approximately equal to the entire contributions made to the plan over the last fourteen years, which is almost the entire life of our firm."

A small businessman who has invested his life in his business now finds that at the time he is ready to close or sell his business, he is faced with a liability which he never contemplated nor agreed to. His collective bargaining agreements over the years specified a defined contribution level for each of his employees covered under a multi-employer plan. The level of benefits has never been a matter between the employer and his employees, rather, it has been left to the trustees of the pension fund.

One public warehouseman writes:

"How do you think I feel to find out that after all these years of contributing that if I should fail or go out of business or sell my company, I'm further handicapped by an unfunded liability of \$14,000 per employee (10 employees) - some \$140,000 for reasons I don't understand."

Another public warehouseman accurately sums up the meaning of withdrawal liability:

"For any employer to guarantee a level of benefits being set by a third party over whom he has no control is tantamount to issuing a blank check. In the case of my firm, the blank check could easily be filled in with an amount larger than the net worth of the company."

The result of MPPAA is to virtually rob a business of its assets.

The constitutional defects which exist in the MPPAA are glaring. Over 80 suits have been filed in courts throughout the country and more will follow. I will not elaborate on these constitutional issues since many of the plaintiffs have already appeared before this Committee. I would simply ask why a businessman has to be forced to incur substantial legal fees to protect his company?

Fortunately, public warehousemen are weathering the current economic crisis with few business failures which would trigger the liability. However, many warehousemen are postponing sales, acquisitions and mergers because of the liability which hangs over them. A major problem facing the public warehousemen is that their flexibility to make sound business decisions is hampered by the withdrawal provisions of MPPAA. A withdrawal can be triggered by:

- o a reduction in the number of employees;
- o an employer closing or moving an unprofitable facility;
- o a decertification of the union;
- o any cessation in an obligation to contribute under a plan for work performed at one or more, but not all, of the facilities under the plan.

The potential for being assessed a withdrawal liability precludes the public warehouseman from making the rational business decisions required for the effective management of his company.

A warehouseman's decision to close or move an inefficient or unprofitable facility could well trigger a partial or possibly a total withdrawal. With the 30-plus Teamster pension funds which cover the country from coast-to-coast along with the numerous other plans which a warehouseman may participate, the movement of a facility may trigger a withdrawal.

Every warehouseman faces the time when he must cut back at one facility for economies, because of expansion into a second facility or the loss of a major customer. If this leads to a reduction in force, the public warehouseman faces a withdrawal liability.

The warehouseman and his employees are virtually locked into union representation, for any decertification means a withdrawal liability. A public warehouseman in his locality finds himself with the only remaining warehouse which is unionized. He says:

"Under normal circumstances we would have three choices of direction, sell to another company, decertify and remain competitive, or close our doors. Under the provision of MPPAA none of these options are available to us. It is my understanding that to take any of these options would incur an immediate liability for the unfunded accounts in the Central State Pension Fund. The net effect of this is that all the assets of the company, my house and all my personal belongings would go to the Teamster Pension Fund."

As this committee has heard, the potential of a withdrawal liability being assessed places the employer in jeopardy of losing his ability to borrow from a lending institution. Lenders have and will become increasingly conservative in their lending policies as they determine that the borrower's withdrawal liability would take precedence over a lender's unsecured loan. New lending commitments may not be forthcoming and existing loans are more likely to be secured. In extreme cases, a business facing financially hard times may find his lender less likely to support him. The lender may decide to accelerate loan repayments as a means of forcing liquidation.

Withdrawal liability also jeopardizes the future of many pension funds and the pension expectations of employees. As current employers withdraw from funds, new employers are afraid to negotiate contracts which include fund participation. As the Central States Fund has testified, there is no "new blood" entering the fund. If this drain on funds without offsetting replacements continues, we will see financially stable funds seriously weakened, and funds which have been experiencing financial difficulties soon facing insolvency. With the prospects of a withdrawal liability, few if any warehousemen will be inclined to negotiate into a multi-employer plan.

In the 1980 Act, the Senate addressed the liability problem for the construction industry with an exemption. The Senate also provided an exemption to public warehousemen in the Section 4203. Unfortunately, the PBGC has chosen not to apply the exemption as the Senate intended. In addition, the authority given to PBGC to grant exemptions in other industries has proven to be time consuming and cumbersome. As the regulatory process inches forward, millions in liabilities have been assessed.

For these reasons, the American Warehousemen's Association supports the approach offered in S.1748. This bill would exempt from Title IV fixed contribution multi-employer pension plans as established in collective bargaining agreements effective April 29, 1980. This bill returns the responsibility for contributions to the employer and benefits to the trustees.

AWA recognizes that this session of the Congress is running short and if agreement can't be reached for passage of S.1748, another year will go by as withdrawal liabilities continue to haunt employers. Our first concern is for immediate relief for public warehousemen and others. If a compromise bill can be presented which is fair, equitable and meaningful, AWA would give it careful consideration.

AWA's major obstacle to supporting a bill other than S.1748 is that the unfunded vested liabilities of a multi-employer pension fund have been created by the trustees of these funds and not by the employer participants. Any legislation striving for the middle-ground must put responsibility on the trustees of the funds for the unfunded liabilities. Mr. John Mathews,

president of OK Delivery System, Inc. of Portland, Oregon, and a member of AWA, addressed this very subject in his testimony before this subcommittee. Mr. Mathews, reflects this Association's position.

In John Mathews' presentation he informed the subcommittee of the recent action by the Western Conference trustees to annex a smaller Teamster fund in San Francisco. That smaller fund, Local 85, brings to the Western Conference unfunded liabilities in excess of \$50 million. This action by the trustees increases the withdrawal liability of every employer participating in the Western Conference Fund by 3%. AWA does not see where this annexation of liabilities by the trustees should be borne by the current employer participants. If the Congress will place restrictions on the multi-employer fund trustees, then compromise on legislation may be possible.

As part of a compromise, AWA would support an automatic and retroactive exemption for those funds representing the trucking and public warehousing industries as originally intended in the 1980 Act. AWA would oppose any asset to benefit ratio test as a requirement for this exemption. The exemption should be automatic, retroactive and not subject to review by the multi-employer fund. Employers who select against the fund should not be faced with an automatic reinstatement of their withdrawal liability. Such a provision would effectively force a small employer to continue with the union. There may be merit to a provision which makes the employer, who selects against the fund, responsible for a liability attributable to his employees, if those employees with vested benefits in the fund would retain those benefits earned up to the time the employer leaves the fund.

AWA supports extending the construction industry exemption to all other multi-employer plans if the exemption is automatic and retroactive. We would, additionally want to see the construction industry exemption changed to provide relief to the employer who selects out of the fund in the same manner as suggested for trucking and warehousing funds.

I appreciate your consideration of my comments and on behalf of the members of AWA, urge the Senate Labor Committee and the Congress to provide swift and retroactive relief to the thousands of employers affected by MPPAA.

American Warehousemen's Association
1165 N. Clark Street
Chicago, Illinois 60610
312-787-3377

TESTIMONY OF T.E. NORTON
CO-CHAIRMAN, GOVERNMENT AFFAIRS COMMITTEE
AMERICAN SUPPLY ASSOCIATION
ON
MULTI-EMPLOYER PENSION LIABILITY
BEFORE THE
SENATE LABOR SUBCOMMITTEE
MARCH 30, 1982

Mr. Chairman: I am pleased to once again address your subcommittee on behalf of the American Supply Association. As you recall, our association is composed of 3,000 small business members of the plumbing-heating-cooling-piping distribution industry, located in over 4,000 business establishments in all 50 states. We have taken active steps to become involved on a first-hand basis, largely due to issues such as the one before the Committee today.

The Multi-Employer Pension Amendment Act of 1980 was in many respects a colossal mistake. Our concerns are directed primarily at the "withdrawal liability" provisions. Based on the premise that financially-weak funds faced a potential mass exodus and therefore widespread pension plan failures, a withdrawal liability provision was designed to require those leaving the plan to pay their share of the funds due retiring employees in the future. "Their share" is not however the amount that the employer agreed to contribute in his collective bargaining agreement, but based on a projection of what would be due in benefits upon retirement should pension investments and future contributions fail to make up current shortfalls. And, the provision does not only apply to those "bailing out" of a failing plan, but a host of other business

events, most of which are well beyond the intent of the law. An ASA businessman cannot retire, permit a change of unions, move his business out of a certain location, or sell his business without the potential risk of an unfunded liability "due and payable" of even greater than his company's net worth. The levies against companies voluntarily or involuntarily leaving a pension plan have been, as the Committee has heard, truly staggering. And, the law has been applied retroactively.

Today, ASA takes the opportunity to testify on behalf of S.1748, sponsored by Senator Orrin Hatch. To turn the Committee's attention away for a moment from the substance of multi-employer pension law and towards the practical application of the Act, we are inserting in the record at this point a portion of the letter from ASA member Bernard D. Reisberg of Goodin Company, Minneapolis, Minnesota.

"November 18, 1981; Senator Orrin Hatch, U.S. Senate, Washington, D.C. 20510; Dear Senator Hatch, In a recent issue of a trade publication, I learned that you introduced a bill which would amend the Multi-Employer Pension Amendment Act of 1980, by exempting from the withdrawal liability provisions of the act those of us who bargained only for defined contributions as opposed to defined benefits. We wish to express our sincere thanks to you for your efforts.

We are an independently owned and operated wholesale distributor of plumbing and heating equipment in Minneapolis, Minnesota. We have approximately 125 employees, of whom 35 are warehousemen, and belong to a local teamsters union. In 1968, in the normal course of the collective bargaining process, the union made a demand to enter the Central States Pension Plan. We resisted these demands because, even at that early date, it was clear that the administration of the plan, including its investment practices, and the handling of

the funds, left much to be desired. However, we did not prevail. The union, through their leadership, was most adamant in their demands that their members become participants of the Central States Plan. They assured us, however, that our sole obligation would be to make weekly contributions to the plan. To insure that this was the case, we negotiated and inserted into the contract the following clause, which also appears in every succeeding contract: "The employer shall have no financial obligation under this plan other than the payment of contributions to the fund as provided herein". ("Provided herein" is merely paying a fixed number of dollars per week). We felt secure, therefore, in the belief that we were negotiating costs, as opposed to guaranteeing benefits, and that the members of the union understood they were bearing the risk of loss, mismanagement, or underfunding. To our amazement, we learned that the Multi-Employer Pension Plan Amendment Act of 1980 essentially amended our contract by removing that language, and imposed upon us an obligation for a portion of the enormous unfunded liability of the Central States Plan. According to an independent actuary retained by our company, our pre 1980 withdrawal liability would be between \$300,000.00 and \$350,000.00. I recognize that this amount is relatively insignificant when compared with the tremendous amount of money involved in the current litigation; however, in the league in which we play, it represents a substantial amount of money.

I also recognize that it is easier to criticize than it is to offer constructive solutions. Permit me to say, however, that in my opinion, the 1980 act was the most inequitable and unjust piece of legislation I have seen come from the Congress in the 25 years since I graduated from law school. The only reasonable explanation can be that the full impact of this legislation was not foreseen at the time it was adopted. The idea that employers who contractually obligated themselves to contribute fixed amounts of money to the plan, and fulfilled that obligation, should now have their contracts rendered void by legislative action, and forfeit a substantial part of their net worth, is pretty hard to accept. When this liability is extended to cover employees of other companies, which either had the foresight to withdraw from the fund, or which are no longer in existence because of bankruptcies or other economic contingencies, the law becomes absolutely unconscionable.

The basic concept of ERISA, that, if an employer promises a benefit to an employee, he should be held responsible for making good on that promise, is sound when applied to single employer plans, or even to Multi-Employer Plans over which the contribution employers in fact shared in the

control and selection of the trustees, their administration of the funds, and the actuarial assumptions made in calculating benefit levels. However, that rationale breaks down completely when applied to the many small businesses who have absolutely no control over the trustees, their policies and administration, and who actually obligated themselves only to contribute a fixed amount of money per employee each month, and who entered the plan solely on that basis."

Mr. Reisberg goes on to recommend a "safe harbor" provision, guaranteeing the employer who is willing to stay in the fund that his withdrawal liability would under no circumstances increase, a provision that he views as a less desirable alternative to the Hatch bill but as perhaps a realistic middle position. For our part at ASA, we strongly believe that movement towards common ground is necessary and in the interests of business and labor alike. The plain facts are that participating employers will get out of multi-employer pension plans before their liability grows, or is even established in the first place. And, no sensible employer will willingly join a multi-employer plan as long as the threat of unfunded liability exists. The consequent erosion of the nation's multi-employer plans' financial base poses serious repercussions for the future of America's working men and women.

ASA has actively participated in efforts to change this law for well over a year. We believe that Senator Hatch's bill offers the most expeditious route to "righting the wrongs" of the 1980 Act. In the absence of labor's willingness to work with business in establishing a mutually beneficial common approach, we are therefore setting about the business of seeing S.1748 passed. We therefore urge you, Senator Nickles, to move expeditiously to mark-up of this legislation. ASA is prepared to give you its full support in these efforts.

CBI

Chicago Bridge & Iron Company

March 11, 1982
P-12/B-3

800 Jorie Boulevard
Oak Brook, Illinois 60521
312 654 7000

Senator Don Nickles
Chairman, Senate Labor Subcommittee
123 Russell Building
Washington, D.C. 20510

Re: Senate Bill 1748
Amendments to MPPA of 1980

Dear Senator Nickles:

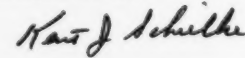
We understand that your subcommittee is currently conducting hearings on this proposed bill. Chicago Bridge & Iron Company is engaged nationwide in the fabrication and construction of large welded steel plate storage and process tanks, and similar structures for the petroleum, chemical and power industries. As such, we contribute to a great many multiemployer pension plans, both national and local, and are thus very interested in any proposed changes to coverage and extent of liability where contributions to such plans under Title IV of ERISA.

We have two general suggestions for provisions which should be included in the bill. First, we realize that it is probably asking too much to go back to a limitation of liability on contributors to such plans by reference only to the amounts contractually agreed to be contributed by employers, even though we feel this is most correct under the applicable labor contracts. In view of this, we think that any amendment to Title IV should make clear that the exception to withdrawal liability for the construction industry, as contained in the 1980 Act, is to be broadly construed.

Second, we feel the 1980 Act did not go far enough in placing affirmative obligations on plan trustees and other fiduciaries as to the determination of a proper level of benefits payable from the plan. In multiemployer plans, we do not feel that this obligation should be restricted only in those situations where the plan has gone into reorganization status. It should be incumbent on the trustees to continually set benefits only reasonable projections of future participation.

Thank you for consideration of our comments, and we would be happy to answer any questions which may assist you in considering the bill.

Respectfully,



Kent J. Schielke
Assistant Counsel

jsm

cc: C. J. Melin/Oak Brook Operations

March 11, 1982

STATEMENT OF LEE OTTENBERG, CHAIRMAN
LEGAL AFFAIRS COMMITTEE
of the
INDEPENDENT BAKERS ASSOCIATION
before the
UNITED STATES SENATE
COMMITTEE ON LABOR & HUMAN RESOURCES
SUBCOMMITTEE ON LABOR

Multi-employer Pension Plan Stabilization Act of 1981 (S. 1748)

Mr. Chairman, my name is Lee Ottenberg and I am Vice President of Ottenberg's Bakery, a variety baker located here in Washington, D.C. The bakery was started in 1869 by my great grandfather Isaac Ottenberg. We bake rolls and bread products on a wholesale basis for hotels, restaurants, sandwich shops, institutions and hospitals throughout the Washington metropolitan area.

We are members of the Independent Bakers Association (IBA), a Washington-based trade association of small and medium-sized wholesale bakers. IBA's 300 bakery and allied members collectively produce over 55% of the nation's baked goods. I serve as Secretary of IBA and as Chairman of the Association's Legal Committee. I appear today on a matter of great importance to my business and to the other bakers in our association in support of Senate bill 1748, the proposed amendments to the Multi-employer Pension Plan Amendments Act of 1980.

Mr. Chairman, IBA feels the 1980 Act is very detrimental to our members. Let me briefly explain why we feel so strongly.

Prior to 1974 employers were liable for the contribution stated in the union contract. In 1974 Congress enacted ERISA

and we became responsible for guaranteeing 30% of the stated benefits of a pension and as a result of the 1980 Act, employers are now liable for 100% of the pension benefits.

Added to this substantially increased liability, the 1980 Act also instituted 10-year vesting for plan participants and decreased the amortization period for benefits to 30 years from 40 years.

The wholesale baking industry is a mature industry which in many parts of the country is unionized. The two primary unions are the Bakery, Confectionery and Tobacco Workers International Union and the International Brotherhood of Teamsters. Both of these unions encourage multi-employer pension plans for their members. They favor them in part for they provide large pooled investments with professional oversight by investment advisors and pension fund trustees. They also have a low operational cost per plan participant with immediate payment of benefits upon retirement or disability. Historically, we as employers have also seen the benefits of defined benefit plans over individual retirement accounts or other savings plans for our employees. Unfortunately, because of the 1980 Act and the problems associated with the Act's termination provisions, many companies who have used the standard union pension may be forced to select other retirement programs in future labor agreements.

When the 1980 Act was passed, it caused little dissent within the food industry. Perhaps we did not really understand the implications of the 1980 bill. We were lead to believe the changes would simply correct several loopholes inherent in the 1973 ERISA

legislation which in the 7 years since enactment had been exploited by some unscrupulous corporations. In particular, we were told Congress wanted to stop the spin-off from parent corporations of unprofitable subsidiaries with large pension benefit liabilities.

But Congress' seemingly noble and simple objective of guaranteeing benefits of a pension plan has, in fact, created serious problems for businesses who provide pensions through multi-employer plans. Let me list some of the problems we have encountered with the present law:

1. The potential unfunded liability created by the 1980 amendments increases the risk a lender undertakes when extending unsecured credit, thereby reducing a company's ability to obtain working capital or fund expansion.

2. The financial cloud of an unfunded pension liability hanging over a business also hampers the traditional sources of repayment to a lender should cash flow not cover a loan repayment. In default situations, a business and a lender may consider discontinuing unprofitable segments of the business, or in a more critical situation may conduct an orderly liquidation of all or part of the assets. Under the 1980 law both of these methods could trigger the payment schedule prescribed in the 1980 law, thereby further taxing cash flow.

3. Smaller companies with any pension liability have become less attractive for acquisition or merger with stronger companies. The cost of terminating the pensions of those employees not absorbed by the merger would have to be assumed by the acquiring company.

4. While the company and the principals are forced to assume the benefit payments, individual companies do not generally have a say in the pension trustees' decisions to raise benefits and grant past service credits, even though these actions by the trustees may increase the funding gap between the company's contributions and the money needed to fully fund the stated benefits.

5. At the termination of a plan, the 1980 Act calls for the pension plan trustees to develop a payment schedule to pay the unfunded liability. The schedule is based upon the number of employees and the company's highest rate of contribution to the pension fund over the last three years. Under most circumstances this brings about full payment within three to seven years. This schedule does not reflect the 20-year repayment cap which some felt was implied in the 1980 bill.

6. The immediate payment of an unfunded pension liability can be brought about by a number of situations, some of which an employer has no control over, such as a decision by the union to switch pension plans or an employee vote to de-certify one union to join another.

7. An on-going business may pick up several partial withdrawals should one or more employees be laid off in the closing or moving of operations to a new area where the workers are covered by a different pension.

8. Should the assets of a business not cover the unfunded pension liability, the 1980 Act transfers the liability to the parent company, the present owners, or the past owners, and allows

seizure of 100% of an owner's personal assets or the assets of the parent company to fund the difference. Only when the liability is greater than these sources does the Pension Benefit Guarantee Corporation step in and pay.

Mr. Chairman, Ottenberg's Bakery has over 250 employees. The drivers are members of the Teamsters and the bakers are members of the BC & T. Each week the company pays \$39.50 per employee to the Teamsters Local Union #33 Industry Pension Fund and \$.97 per hour for each baker to the BC & T International Pension Fund. Our payments to both funds are current and until recently we believed this satisfied our obligation. We do not control the investment decisions of the pension trustees or investment advisors and therefore have no control over the investment performance of the funds, yet our liability fluctuates with the value of the assets behind the pension. And we have never negotiated benefits, only contributions. Yet now, the Congress through the enactment of the 1980 Act has brought the entire burden for the solvency of this pension on the company and created a considerable cloud over the value of our family business, a Pandora's box if you will. This is a situation that can limit our growth, and make the considerable investment our family has made in the business worthless.

The Independent Bakers Association wholeheartedly supports the efforts of Senator Orrin Hatch (R-UT) to correct the Multi-employer Pension Plan Amendments Act of 1980. An employer should only be required to meet his negotiated obligation to contribute a specified amount per employee to the pension plan.

Thank you, Mr. Chairman, for this opportunity to speak
in support of S. 1748.

Washington contact:

Robert N. Pyle, President
Independent Bakers Association
P.O. Box 3731
Washington, D.C. 20007
202/223-2325



NATIONAL
AUTOMATIC
MERCHANDISING
ASSOCIATION

7 S. DEARBORN ST., CHICAGO, ILLINOIS 60603 (312) 346-0370

Serving the Vending / Foodservice management industry

EASTERN OFFICE 1830 Isaac Newton Square, Boston, MA 02080 (781) 426-1210
WESTERN OFFICE 11300 Serrano Valley Road, San Diego, CA 92121 (714) 482-5112

UNITED STATES SENATE
COMMITTEE ON LABOR AND HUMAN RESOURCES
SUBCOMMITTEE ON LABOR

Public Hearing on Senate Bill 1748:
Multi-Employer Pension Plan
Stabilization Act of 1981

NATIONAL AUTOMATIC MERCHANDISING ASSOCIATION'S
COMMENTS CONCERNING
SENATE BILL 1748

March 11, 1982

RICHARD W. FUNK, General Counsel
National Automatic Merchandising
Association
Seven South Dearborn Street
Chicago, Illinois 60603
(312) 346-0370

P. KEVIN CONNELLY
Lederer, Reich, Sheldon & Connelly
208 South LaSalle Street
Chicago, Illinois 60604
(312) 726-6062

Attorneys for National Automatic
Merchandising Association

1982 WESTERN CONVENTION • SAN FRANCISCO • APRIL 2-4
1982 NATIONAL CONVENTION • NEW ORLEANS • OCTOBER 7-10

NATIONAL AUTOMATIC MERCHANDISING ASSOCIATION
COMMENTS ON S. 1748

SUMMARY OF ARGUMENT

	PAGE
I. Introduction	1
NAMA is the national trade association of the merchandise vending and food service industry.	
II. The Nature Of Food Service	1
Food service businesses rely predominantly upon sales to employees in their workplace and, like certain other service businesses, are constantly subject to displacement by virtue of the rebidding of those service contracts.	
III. The Impact Of MPPAA	3
This displacement results in withdrawal liability under current law despite the fact that it is not within the control of food service employers and results in no independent business advantage to the food service employer.	
IV. The Dimensions Of The Problem	4
Withdrawal liability based upon such displacement creates not only serious financial consequences but also fosters labor strife and has anti-competitive effects.	
V. Conclusion	6
Congressional relief is essential through the passage of either S. 1748 or other appropriate legislation.	

COMMENTS OF NATIONAL AUTOMATIC
MERCHANDISING ASSOCIATION

I. INTRODUCTION

The National Automatic Merchandising Association ("NAMA") is the national trade association of the merchandise vending and food service management industry. Its membership consists of nearly 2,000 vending and food service companies as well as over 400 vending machine manufacturers and suppliers of vendible products and component parts. Also, affiliated with NAMA are 30 state and regional councils serving this industry in their respective localities.

NAMA was founded in 1936 to assist its members in a wide spectrum of matters and regularly represents their interests before the courts, the legislatures, and the executive and administrative branches of government. Such representation constitutes a significant aspect of NAMA's activities.

Because NAMA is distressed by the discrete impact of the Multi-Employer Pension Plan Amendment Act of 1980 ("MPPAA") on its membership, it submits these comments in support of Senate Bill 1748. It particularly directs this Sub-Committee's attention to the effects of MPPAA on service businesses which are faced with recurring and non-controllable withdrawal liabilities under that law.

II. THE NATURE OF FOOD SERVICE

This industry is, in large part, dependent upon sales to

employees in their workplace. Total sales for 1980 exceeded eighteen billion dollars. See, Vending Times Census of the Industry - 1981, attached as Exhibit A. While approximately 75% of all sales are through vending machines, manual food services (i.e., those which, like cafeteria or snack bars, require the physical presence of employees) have been a substantial growth area. Ibid. In addition, vending and manual food services are frequently combined. See, Ford Motor Co. v. N.L.R.B., 441 U.S. 488, 491 (1979).

Like certain other services, such as maintenance (see First National Maintenance Corp. v. N.L.R.B., ___ U.S. ___, 69 L. Ed. 2d 318 (1981)) and security (see, N.L.R.B. v. Burns International Security Services, 406 U.S. 272 (1972)), food service is routinely contracted out by most businesses. Those service contracts are, moreover, subject to periodic rebidding (Burns International Security Services, 406 U.S. at 275) and/or may be terminated by the business location for other non-economic reasons (Ford Motor Co., 439 U.S. at 503).

Turnover in manual food service operations is approximately 12% of all locations every year. See, survey data of NAMA members attached as Exhibit B. Routinely, that turnover of an account results in the retention of employees by the successor food service employer. See, ABC Food Service Inc., 176 NLRB 426 (1969) (64 out of 84 employees retained). That, moreover, is often accompanied by the assumption of any existing labor agreement which, although not required by federal labor law, is a prudent

labor relations policy encouraged by the National Labor Relations Act. See, Burns International Security Service, 406 U.S. at 291.

III. THE IMPACT OF MPPAA

MPPAA worked for a fundamental change in existing law by substituting "withdrawal" for "plan termination" as the insurable event. See, Sacher and Ford, "Fundamental Changes Seen In Multi-employer Plans", Legal Times of Washington (Oct. 20, 1980). A "withdrawal" occurs when a contributing employer permanently ceases to have an obligation to contribute to the plan or where its obligation to contribute has substantially diminished. Public Law 96-364, Section 104; 29 U.S.C. §§1381 et seq. Absent certain exceptions and limitations, a "withdrawal" triggers financial liability for the withdrawing employer for a share of the plan's unfunded vested benefits. Ibid.

Examples of events generating potential withdrawal liability include not only closing, moving, or selling a business but also eliminating either plan contributions from the bargaining agreement or the bargaining relationship itself. See, Sacher and Ford, supra. While MPPAA has created troubling problems with regard to such actions, it is important to note that each of those triggering events, with the exception of the last, is within the entrepreneurial control of management and would normally accrue some business advantage.

In contrast, the turnover of a service contract is radically distinct. There is neither a financial transaction between the predecessor and the successor nor any economic benefit to the

withdrawing employer. There is, however, withdrawal liability:

An example of this situation is a service contract for a particular location, such as cleaning or cafeteria services. Typically, these contracts are let out by bid, and the company providing services may lose a contract to a competitor. If the location is a separate bargaining unit contributing to a multiemployer plan, the loss of such a contract will be a withdrawal, either partial or complete. Even if the competitor hires a majority of the predecessor's employees and agrees to the same contract, the competitor will be a successor employer under the labor laws but will not foreclose or acquire the predecessor's withdrawal liability. Thus, the predecessor will be obligated to pay the withdrawal liability upon loss of the contract.

Hoffman, "Pension Law Sets Trap In Sale Of Businesses," National Law Journal (Nov. 16, 1981).

IV. THE DIMENSIONS OF THE PROBLEM

Foremost among the problems engendered is the scope of financial liability attached to the involuntary and uncontrollable "withdrawal" triggered by rebidding of service contracts. One of NAMA's members, Interstate United Corp., is currently litigating an assessment of \$364,000.00 for 27 employees. Interstate United Corp. v. Council 30 et al., C.A. No. 81-74664 (E.D. Mich). Although that case involves a relocation of work, it is illustrative of the financial consequences attendant to "withdrawals" by virtue of rebidding.

As knowledge of that economic problem increases (see, Lublin, "Law To Protect Multi-Employer Pensions Is Causing Hardship For Many Businesses", Wall Street Journal, March 5, 1982), MPPAA will, NAMA believes, generate labor strife. Employers are now avoiding

new commitments to multi-employer plans (ibid.) and are even being counseled to consider withdrawal. See, Cummings, "Pension Plan Act Weakens Employers' 'Community Interest'", National Law Journal (Sept. 7, 1981). Indeed, it would be a foolhardy employer who, upon succeeding to a unionized food and vending contract, sought to guarantee labor stability by accepting a collective agreement which included contributions to a multi-employer plan.

Outside the Scylla of financial disaster and the Charybdis of labor unrest, moreover, lies a troublesome backwater. As the problems of taking on new business rise, so may the unwillingness of entrepreneurs to take on that business. In addition, because many contracts for food service are management fee (i.e., cost plus) agreements (see Beitel and Funk, "What You Should Know About Location Contracts Today", Vend (March 1, 1968), attached as Exhibit C), the spectre of withdrawal liability being shifted to the host business may further retard competition.

None of these problems, moreover, can be resolved within the context of the existing law's allowance for PBGC regulations and/or under the selective options which plans may adopt. First, unlike other industries with discrete concerns such as entertainment, trucking, or construction, there is no predominant union or group of unions which have organized the vending and food service industry. In fact, the union representing the employees at the business where the food is provided typically will also acquire representation of the food services employees by virtue of proximity. Second, even in areas where a single industry is

uniformly represented by the same union and covered by the same plans, recent experience under MPPAA suggests that there will be no consistent or logical approach to pension problems by the parties involved. Rather, the key concern is what can I do "to 'stick' a greater proportion of withdrawal liability on my competitor and less upon me?" Cummings, supra. In short, if Congress fails to address these overriding problems in the best interests of employees, employers, unions, and trust fund administrators alike, the status quo guarantees that everyone's interests will be ill-served.

V. CONCLUSION

While Senate Bill 1748 is admittedly broad, that may be an appropriate choice:

There is an element of deregulation that comes down to nothing more than less government. It recognizes that some aspects of human economic behavior are so ambiguous or multi-purpose that government cannot reach the concededly questionable conduct without unduly restricting legitimate activity. It accepts the fact that we must tolerate some abuse to avoid the evils of overregulation.

Friedman, "Deregulation and Litigation", 8 Litigation 8, 50 (1981).

The consequences of continuing the status quo under MPPAA are undeniably severe, arguably even worse than the problems which precipitated the passage of MPPAA. 127 Cong. Rec. §11629-11630 (daily ed. Oct. 19, 1981) (comments of Sen. Hatch).

If, however, this Sub-Committee pursues other options, NAMA would suggest that such legislation incorporate several key factors. First, just as MPPAA distinguished between "withdrawals"

and "mass withdrawals" (Public Law 96-364, Section 104; 29 U.S.C. §1399(a)(1)(D)) further refinements are necessary to distinguish between the reasons for and consequences of withdrawal; to distinguish withdrawals due, for example, to involuntary loss of a service contract upon rebidding and withdrawals that are within the sole entrepreneurial control of the employer, such as a plant removal. Second, to avoid divisiveness in plan administration, amendments addressing such problems should be mandatory and not optional. Finally, like MPPAA itself, amendments should be made retroactive.

Whatever the ultimate solution, NAMA believes that MPPAA is desperately in need of reconsideration. For that reason, it supports Senate Bill 1748 and offers these comments for this Sub-Committee's consideration.

Respectfully submitted,

Richard W. Funk

RICHARD W. FUNK, General Counsel
National Automatic Merchandising
Association
Seven South Dearborn Street
Chicago, Illinois 60603
(312) 746-0370

P. Kevin Connelly

P. KEVIN CONNELLY
Lederer, Reich, Sheldon & Connelly
208 South LaSalle Street
Chicago, Illinois 60604
(312) 726-6062

Attorneys for National Automatic
Merchandising Association

VENDING AND MANUAL LOCATIONS

The major type of location served is plants and factories, which accounted for 45.2 per cent of total dollar sales, while public locations registered 23.1 per cent. The system also served offices (6.8 per cent), colleges and universities (6 per cent), government (including military) installations (4.7 per cent), hospitals and nursing homes (4.1 per cent) and schools (3.3 per cent).

EXHIBIT A

	1979	1980
Plants, Factories	230,000	225,000
Primary and Secondary Schools	22,000	22,000
Colleges, Universities	11,000	10,000
Public	560,000	550,000
Government and Military	16,000	15,000
Offices	115,000	120,000
Hospitals and Nursing Homes	16,000	17,000
Other	120,000	110,000
Total	1,090,000	1,069,000

LOCATION DOLLAR SALES	Vending 1980	Manual 1980
Plants, Factories	\$6,226,000,000	\$2,115,000,000
Primary and Secondary Schools	458,000,000	505,000,000
Colleges, Universities	832,000,000	505,000,000
Public	3,203,000,000	370,000,000
Government and Military	652,000,000	230,000,000
Offices	945,000,000	460,000,000
Hospitals and Nursing Homes	568,000,000	270,000,000
Other	940,000,000	145,000,000
Total	13,864,000,000	4,600,000,000

MANUAL FOOD SERVICE

10 per cent of all vendors in foodservice also serve food manually. These operators had sales of \$4,600,000,000 in manually dispensed food products during 1980, a 9.5 per cent increase over the prior year. Total sales in 1979 were \$4,200,000,000; in 1978, \$3,745,000,000.

MANUAL FOOD LOCATIONS/SALES SHARE

	1978	1979	1980
Plants, Factories	46%	47%	46%
Colleges and Universities	13%	11%	11%
Primary and Secondary Schools	13%	11%	11%
Offices	9%	9%	10%
Hospitals, Nursing Homes	6%	5%	6%
Public Locations	6%	8%	8%
Government and Military	4%	5%	5%
Other Locations	3%	4%	3%

MANUAL FOOD PRODUCTS/SALES SHARE

	1978	1979	1980
Entrees, hot	24%	24%	22%
Entrees, cold	4%	4%	3%
Sandwiches, hot	23%	23%	24%
Sandwiches, cold	18%	18%	19%
Beverages, hot	6%	6%	7%
Beverages, cold	8%	8%	8%
Juices	2%	2%	2%
Soups	4%	4%	4%
Salads	8%	8%	8%
Desserts	3%	3%	3%

YEARLY EXPANSION INTO MANUAL FOODS

- 10% of all operators with manual food service started this service in the years 1976-1980.
- 25% of all operators with manual food service started this service in the years 1970-1975.
- 25% of all operators with manual food service started this service in the years 1960-1969.
- 20% of all operators with manual food service started this service in 1959 or earlier.

NAMA MULTI-EMPLOYER PENSION SURVEY

To quantify the turnover in location accounts, NAMA requested fifteen of its larger members to identify both the total number of manual food service locations serviced in 1980 and the total number of such locations lost during 1980. This questionnaire was mailed on February 22, 1982, and to date six responses have been received:

	<u>No. of Manual Locations</u>	<u>No. of Locations Turned-Over</u>
Company No. 1	606	39
Company No. 2	350	31
Company No. 3	737	84
Company No. 4	480	17
Company No. 5	247	50
Company No. 6	950	170
TOTAL	3,370	391



National Cigar Corporation

407 N. MAIN ST. - P. O. BOX 97
FRANKFORT, INDIANA 46041

March 8, 1982

United States Senate
Committee on Labor and Human Resources
Subcommittee on Labor
Senator Don Nickles - Chairman
Washington, D. C. 20510

Dear Senator Nickles:

This is in regard to S. B. 1748, the Multiemployer Pension Plan Stabilization Act.

We had requested permission to testify before the Labor Subcommittee in favor of this legislation, our letter dated February 10, 1982; however, due to the large number of requests, our testimony could not be taken orally, your letter dated February 17, 1982, but you suggested we submit written testimony. We hope that the following will be given full consideration as if it were presented orally before the subcommittee.

We are presently in the midst of the problems of a withdrawal from a Multiemployer Pension Plan, and the liability incurred by the passage of withdrawal liability legislation which was effective April 29, 1980.

Our employees were organized September 1, 1977 by the Retail, Wholesale and Department Store Union, AFL-CIO, and, after eight months of negotiations, we signed, on June 7, 1978, the first contract which included a provision that we pay a definitive amount per employee per week into the Union Pension Fund. Through the initiative of the employees a Union decertification vote was taken April 13, 1981, and the Union was decertified with the contract expiring May 12, 1981. According to the trustees of the Union Pension Fund we owe a withdrawal liability of \$35,000.00. Using the same information as did the Union Plan, an independent actuary shows that they owe us \$7,000.00, which, of course, is a difference of \$42,000.00.

Obviously, if the withdrawal liability had been in effect at the time we were negotiating this Pension benefit, we never, under any circumstances, would have entered into such an agreement. Now, after having no control over the plan nor having ever had access to any financial information concerning the plan, we are saddled with a \$35,000.00 liability. Incidentally, we were from May 12, 1981, the expiration date of our final contract to December 19, 1981 in receiving

our withdrawal liability information from The Union Pension Fund.

Please bear in mind that we, as a Company, did not make the decision to withdraw from The Union Pension Plan, our employees did by initiating a decertification vote which was successful. The Company should not be held responsible for a liability which they did not create.

In lieu of a withdrawal liability we offered to take over the assets and liabilities of the portion of the Plan applying to our employees. The Union Pension Plan would turn over the assets of our employees through past contributions, and we, in turn, would set up a Pension Plan, with the approval of PBGC, to cover all liabilities of our past, present and future employees. The Union refused. In our particular case, where we did not create the withdrawal, we felt this was a fair and equitable proposal. We feel that an employer should have some choices, particularly when they are a victim of circumstances as we were.

The Multiemployer Pension Plan Amendments Act of 1980 (MPPAA) is very unfair and arbitrary.

The provisions of the above Act are unfair in that they forced changes in the agreement between our Company and The Pension Plan to which we had no negotiable rights. In other words, MPPAA arbitrarily changed the terms of the contract between National Cigar Corporation and The Pension Plan without our consent or even the right of negotiating the changes. We do not feel that anyone should have the right to change the terms of an agreement or contract without both parties involved agreeing to the changes. If a withdrawal liability was to be imposed, it should have applied to only agreements entered into after the passage of MPPAA.

MPPAA has, in effect, changed the rules in the middle of the game. In any endeavor the participants at the outset want to know the rules that will prevail throughout the contest. Any changes made should have the consent of all participants, so that, no undue advantage is taken of anyone.

We have never had access to any financial information concerning The Union Pension Plan to which we contributed from June 1, 1978 till May 12, 1981 on behalf of our employees. We have no idea whether or not The Plan was properly funded when we entered nor do we know the funding while we participated.

MPPAA is unfair in that employers who withdraw after its enactment might well be paying liability for employers who withdrew prior to its enactment. This is an unfair burden.

MPPAA is arbitrary in that the legislation is very vague as to how the withdrawal liability is to be figured. It appears that there can be an extremely large variance in the liability figure depending on how it is calculated. The withdrawal liability has created a financial burden on the Company which we did not bargain for nor agree to. Since we did not originally enter into an agreement whereby at termination we might have some sort of liability, we did not budget nor

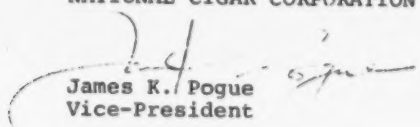
take into account any financial arrangement for handling such liability. It is certainly a shock and a burden to suddenly discover a liability for which you did not bargain.

We feel certain that when MPPAA was enacted that there was not the realization of just how unfair and arbitrary this was to Companies, such as ours, who were already in a Multiemployer Pension Plan. In order to rectify the grave injustice done by MPPAA we strongly urge this committee to expedite S. B. 1748, with all possible haste, through committee deliberations and strongly urge that this legislation be reported to the full Senate recommending passage.

We thank you for allowing us to be heard.

Sincerely,

NATIONAL CIGAR CORPORATION



James K. Pogue
Vice-President

JKP/cs

COAL UTILITIES CORPORATION

205 ROSS STREET • PITTSBURGH, PA. 15210
(412) 261-5179

March 9, 1982

CERTIFIED MAIL

Senator Donald Nickles
Labor Subcommittee
Room 4230 Dirksen Senate Office Bldg.
Washington, D.C. 20510

Attention: Charlene Abshire

Dear Senator Nickles:

I would like to have the following comments read or written into the Senate Hearings on the Adverse Impact of the 1980 ERISA Laws on Small Business.

I am President of Coal Utilities Corporation, a small closely held surface mining operation located in Central Pennsylvania and we have been actively mining coal since July 1973 under a UMWA contract. We have not signed the 1981 contract and are presently still negotiating with the UMWA but the 1980 ERISA laws seem to prevent the UMWA from making economic concessions which we need to survive.

The following table indicates our contributions to the UMWA Trust Fund over the past six years:

Year	Number of UMWA Employees	Annual Tonnage	Paid into Trust of UMWA	Average Dollars Per Employee/Per Year
1981	8	52,429	\$100,596.97	\$12,574.62
1980	7	77,348	107,872.95	15,410.42
1979	6	53,710	80,797.77	13,466.30
1978	5	53,278	76,278.62	15,255.72
1977	5	79,721	91,620.80	18,324.16
1976	5	72,724	69,517.68	13,903.54
Totals:	36 (Average 6)	389,210	\$526,684.79	\$14,630.13 Average Total

The UMWA Pension Plan is divided into a 1950 Trust Fund and a 1974 Trust Fund. The 1950 Fund provides retirement and medical benefits for those miners that retired or had vested service prior to 1974 (none of our employees fall into this 1950 category). Approximately 80% of our contributions are paid into the 1950 Fund. The unfunded liability of the 1950 Trust was mostly contracted by past and present members of the Bituminous Coal Operators Association (BCOA) which negotiates all contracts with the UMWA. The formula for payment into the funds negotiated by BCOA results in their paying between \$3,500 and \$5,000 per year per man versus our \$12,500 to \$18,000 per man per year. The practice of the UMWA is to refuse to sign anything but this contract with independent operators like ourselves.

To: Senator Donald Nickles

3/9/82

Recently, we have requested our potential withdrawal liability from both the 1950 Trust and the 1974 Trust and were informed that the 1950 Trust buyout was \$337,060 and the 1974 Trust was \$157,656 for a total of \$494,716. A major insurance carrier has furnished us with quotes to fund a plan equal to the UMWA plan for our present eight employees at a total cost of less than \$10,000 per year.

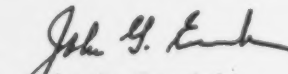
Last year, several of our men petitioned the NLRB to decertify our operations but lost the elections. If the union had been decertified, we would have been faced with the \$494,716 withdrawal liability even though we had no control of events. This is a frightening situation! The UMWA bargaining unit negotiating with us knows this buyout would collapse our company and has thus far refused to make any concessions for wages or retirement payments from the national coal agreement.

We have been told that our withdrawal liability is 0.2% of the total funds, while our eight men comprise only 0.005% of the active UMWA membership. We are currently paying more than our share into the UMWA Trust Funds and our withdrawal liability reflects this inequity.

In conclusion, we need legislative help to prevent unions from imposing blackmail bargaining tactics, remove unfunded liabilities if the employees wish to decertify, and latitude to negotiate lower and/or equitable pension programs.

Should any additional information be necessary, do not hesitate to inquire and please do what you can to relieve us of the burdens of the 1980 ERISA law.

Very truly yours,
COAL UTILITIES CORPORATION


John G. Emerick,
President

JGE/rk

NATIONAL LUMBER AND BUILDING



MATERIAL DEALERS ASSOCIATION

STATEMENT BY

NATIONAL LUMBER AND BUILDING

MATERIAL DEALERS ASSOCIATION

Washington, D.C.

PRESENTED TO

SUBCOMMITTEE ON LABOR

SENATE LABOR AND HUMAN RESOURCES COMMITTEE

UNITED STATES SENATE

ON S. 1748

THE MULTIEMPLOYER PENSION PLAN STABILIZATION ACT

MARCH 17, 1982

The National Lumber and Building Material Dealers Association greatly appreciates the opportunity to present our views on the extremely troublesome and potentially disastrous issue relating to title IV of the Employee Retirement Income Security Act of 1974 (ERISA), known as the insurance and withdrawal liability provision as amended by the enactment of the Multiemployer Pension Plan Amendment Act of 1980 (MPPAA).

Briefly stated, it is our opinion that the enactment of MPPAA has created an unfair, unexpected and unconstitutional burden for many of our retail lumber and building material dealers who are involved in multiemployer plans. NLBMDA strongly supports the legislation which is currently under consideration by the subcommittee. S. 1748, entitled the "Multiemployer Pension Plan Stabilization Act of 1982" and introduced by Senator Orrin Hatch of Utah, represents both a practical realization and a solution to the withdrawal liability problems experienced by many of our members.

The National Lumber and Building Material Dealers Association is a national trade association, consisting of twenty-five federated regional, state and metropolitan associations of retail lumber and building material dealers. Our member dealers, totalling some 11,000 in all parts of the nation, supply building materials to the home building, general contracting, remodeling and building maintenance industries, and to the general public.

A great many of our dealers and their associations have a vital interest in labor and retirement costs associated with multiemployer pension plans because of the significant effect those costs have on the products being provided to the consumer.

The great majority of NLBMDA members are closely held, family operated, small businesses which traditionally have had excellent working relations with their employees, both unionized and non-unionized. NLBMDA member dealers remain steadfast in their commitment and obligation to the retirement rights of their employees. However, a major point of contention has developed between many of our lumber and building material dealers and their unionized employees. This source of employer/employee friction is a result of Congressional passage of MPPAA.

In 1974, NLBMDA and its dealer members supported Congress' actions to ensure that workers covered by pension plans would receive the benefits promised by the plans upon retirement. The legislation, known as the Employee Retirement Income Security Act of 1974 (ERISA), was successful in solving the many problems caused by certain well-publicized abuses in a number of worker pension plans.

As passed though, the ERISA law created a number of problems with the multiemployer pension plans. It was recognized that the issue of withdrawal liability from multiemployer pension plans must be included in the ERISA law to avoid a massive business abandonment from the plans. As a result, the Multiemployer Pension Plan Amendment Act of 1980 was passed. The 1980 law requires an employer who wholly or partially withdraws from a pension plan to pay his prorata share of unfunded vested liability to the plan. MPPAA also requires a company to be liable to a multiemployer pension plan even when the withdrawal liability exceeds the company's net worth.

The withdrawal liability requirement greatly disrupts normal business operations often resulting in a situation whereby a company cannot expand, borrow, relocate or sell assets without

triggering the enforcement of the multiemployers pension plan liability. In fact, as currently written, the provisions of MPPAA and ERISA could well damage the pension plan system serving as a disincentive for employers to participate in any multiemployers pension because of the withdrawal or partial withdrawal liability.

The underlying concept of the MPPAA law was revolutionary in that it required an employer who participates in a multiemployer pension plan to pay their share of the total unfunded vested liability if the employer, for any number of reasons, withdraws from the plan or even partially "triggers" the withdrawal liability.

The proposed legislation, S. 1748, exempts certain fixed contribution multiemployer pension plans from title IV of ERISA by establishing a separate "fixed contribution multiemployer plan" under the withdrawal and plan termination insurance provisions (title IV) of ERISA. The fixed contribution multiemployer plan would remove employers who have only negotiated contribution levels in their collective bargaining agreements prior to April 29, 1980 from the insurance provisions.

The bill would return the responsibility of multiemployer plans to the freedom of the collective bargaining system. Employers who have only negotiated benefit levels in their collective bargaining agreements would still be subject to the current provisions of title IV of the Multiemployer Pension Plan Amendments Act and ERISA. But, employers who have only negotiated contribution levels in their collective bargaining agreements would not be subject to the MPPAA and ERISA. In both cases, employers would remain responsible for what was agreed to in bargaining agreements with the union.

The employer's liability would only be limited to the employer's contribution levels. Unions would not lose any benefits under the proposal. Benefit levels would be maintained at the same level as currently prescribed by law.

The effects of MPPAA are being felt by a growing number of NLBMDA member dealers. One of our federated associations, the Illinois Lumber and Material Dealers Association, Inc. of Springfield, estimates that about one-fourth of the lumber and building material merchants in that state are parties to a union contract and would be subject to the withdrawal liability provisions of MPPAA. A number of other NLBMDA federated associations, generally located in the Mid-West and California, as well as numerous individual lumber dealers, have contacted our Washington office on this important issue. Obviously, the withdrawal liability problem is nationwide and growing.

Communications from our lumber and building material dealers emphasize and object to the uncontrollable nature of the MPPAA withdrawal liability provision. Specifically, our industry's resentment stems from the fact that the lumber and building material dealers do not recognize any responsibility to a multiemployer pension plan other than the agreed to contribution level mandated by the employer/employee contract. When our lumber and building material dealers negotiated pension plans into their union contracts, it was understood that the dealer would be responsible for the cents per hour only. MPPAA has, we feel, unjustly expanded this responsibility to cover not only the prescribed contribution level, but also the benefits promised by the independently controlled pension plans.

Because the affected dealer has no control or responsibility for the administration or the allocation of pension benefits, the

dealer/employer should not be penalized for inadequate administration of a pension plan which, because of circumstances beyond control of the employer, experiences an increase in unfunded vested benefits.

A point must be made here that has repeatedly been voiced by a number of our dealer members. These dealers have always been, and will continue to remain, committed to the retirement rights of the employees who work for their respective businesses. It is especially upsetting to our dealers, however, when they are required to pay for the pension plan benefits of workers who are employed elsewhere. Admittedly, this objection is based on emotion, but nevertheless has a major impact on future decisions by independent lumber and building material dealers when they consider future pension plan arrangements.

NLBMDA objects strenuously to any law which, as in the case of the withdrawal liability provision of MPPAA, requires our lumber dealers to pay for a debt which was never bargained, signed, or agreed to and which can be used as a lawful vehicle to actually confiscate the assets of the business. The constitutionality of a provision of law which subjects an individual's business and property to such seizure, even under the guise of workers retirement rights, is clearly in question.

Specific examples of the effect the provisions of the 1980 Act have on the retail lumber and building material industry demonstrates how disastrous and uncontrollable the withdrawal liability requirements can be.

A "blank check" situation has developed for many of our dealers located in California according to the NLBMDA federated Lumber Merchants Association of Northern California in San Jose.

Labor contracts, containing clauses which hold the dealer responsible for whatever the union may determine to be the pension plan liability, are currently being reviewed, yet these same labor contracts do not contain necessary documentation to determine just how much the unfunded pension plan liability actually is. In addition, lumber dealers are being billed an additional 5 percent of their agreed-to contribution levels in order to offset any unfunded pension plan liabilities occurring after December 31, 1979.

An excellent example of the confusion inherent in the multi-employer pension plan issue is the withdrawal liability imposed by the Western Conference of Teamsters Pension Trust on the American Lumber Company of Modesto, California. This is a relatively inexpensive withdrawal liability example, but it is characteristic of a nationwide problem. The Western Conference of Teamsters Pension Trust, to the best of our knowledge, has \$1,562,924,000 in unfunded vested benefits as of December 31, 1979. The American Lumber Company elected to withdraw from the pension plan after April 28, 1980. The pension plan notified the company that it had an unfunded liability of \$3,350.15, yet the documentation provided by the pension plan to the company is totally confusing and, to date, the American Lumber Company does not know its total unfunded liability. As an example of the type of pension plan ambiguity which exists for many of our dealers, we have attached a copy of the Employer Withdrawal Liability Notice and Demand for Payment for the subcommittee's review.

The uncertainty of the multiemployer pension plan situation has resulted in the San Luis Mill and Lumber Company of San Luis Obispo, California, and the DeCou Lumber Company of Atascadero, California, both refusing to sign their labor contracts. Both

companies are reluctant to enter into a "blank check" clause making the companies liable for unfunded benefits guaranteed by a union pension plan that has already run up \$1.5 billion in unfunded benefits. Requests by these companies to the pension plan for a stated dollar amount of their plan liability have not been answered. Instead, the union is pressuring the companies into signing the "blank check" clauses or face the possibility of a strike or unfair labor practices charges.

The multiemployer pension plan law is having a profound effect on a significant number of our lumber dealer members. This is especially true for lumber dealers who are planning to make major business operation changes, such as the merging, liquidation or selling of the business. Any of these activities would trigger the mechanism for unfunded liability.

A disastrous managerial situation has developed for some retail lumber dealers in that these businessmen cannot determine their potential liability because the union pension plans cannot provide adequate information on the unfunded liability. Therefore, businesses facing liquidation or sale, knowing that they must first satisfy the union pension plan's demand for funds, cannot even estimate such withdrawal costs.

Harry E. Mendenhall, Executive Vice President of the Lumber Merchants Association of Northern California, perhaps stated best the effects of MPPAA on the small business lumber dealer when he wrote:

"The major problem for any family-owned corporations is the unknown obligation. Dealers and their families have worked long and hard hours for 40, 50 and 60 years to build the business. It is now time to sell and retire but they suddenly find that what they thought was theirs could easily be encumbered by demands for unfunded pension liabilities."

The Multiemployer Pension Plan Stabilization Act of 1982 is needed, not only for a great number of businesses which have negotiated contributions to multiemployer plans, but never guaranteed any benefit levels and which are now subject to the confiscatory nature of MPPAA's withdrawal liability provisions, but also for the millions of unionized workers who are depending and will depend upon financially sound and growing retirement plans. It is ironic that the very legislation enacted by Congress to protect these type pension plans now stands as the primary deterrent to the viability and continued existence of multiemployer pension plans.

Today, many businesses, both large and small are looking toward Washington, hoping that those problems Congress has created can be rectified. The current problems with MPPAA mandate an immediate legislative review. NLBMDA congratulates this subcommittee and particularly Senators Orrin Hatch and Don Nickles for co-sponsoring S. 1748 which would limit employer's liability to the employers contribution levels in multiemployer pension plans. Restoration of normal business practices and the removal of the huge withdrawal liability disincentive to join multiemployer plans would be accomplished by the passage of S. 1748. The enactment of this legislation would help create a more stable and secure pension plan environment for both the union employee and employer.

Western Conference of Teamsters Pension Trust

An Employer-Employee Jointly Administered Pension Plan

Northern California Administrative Office:
Suite 111, 433 Airport Blvd.
Burlingame, Ca. 94010
(415) 343-8411

February 9, 1982

American Lumber Co.
9th & M Streets
Modesto, CA 95354

RE: Western Conference of Teamsters Pension Trust Fund
Employer Withdrawal Liability Notice and Demand for Payment:
Employer Number(s) 015450

Dear Mr. Minsinger:

An employer who withdraws from the Western Conference of Teamsters Pension Plan (the "Plan") after April 28, 1980, is generally liable to the Western Conference of Teamsters Pension Trust Fund (the "Fund") for a share of the Plan's unfunded vested benefits, as determined under the Employer Withdrawal Liability Rules and Procedures adopted by the Trustees of the Fund pursuant to the Multiemployer Pension Plan Amendments Act of 1980. In May, 1980 you withdrew from the Plan in a complete withdrawal. This Notice is a formal demand for payment of your withdrawal liability in connection with that withdrawal, in the amount specified below, and according to the schedule of Annual Payments below, both of which have been determined by the plan sponsor.

Unless you elect to prepay the full amount of your withdrawal liability in a lump sum, you are required to amortize that liability by making equal Annual Payments of \$3,350.15 to the Fund over a period of years. The Annual Payments amount shown is the amount of your withdrawal liability as it is less than the amount of your Annual Payment determined in accordance with the Plan formula. Amortization of your withdrawal liability at the interest rates used in the Fund's actuarial valuation as of December 31, 1979 requires one (1) Annual Payment.

We enclose a detailed description of how your withdrawal liability and your Annual Payments were calculated. Also, enclosed is a detailed amortization schedule showing the exact duration of your Annual Payment obligation.

Each Annual Payment is payable in 12 equal Monthly Installments of \$1,413.69. Your payment is due on or before April 10, 1982. The amount due is \$3,350.15 which is the sum of all Monthly installments falling due between January 1, 1981 and April 10, 1982 inclusive.

Page Two

Where to Mail Your Payments

You must make all withdrawal liability payments by check made payable to the Western Conference of Teamsters Pension Trust Fund and mailed to the following address:

Western Conference of Teamsters
Pension Trust Fund
c/o Seattle First National Bank -
Account No. 98-840-556
P.O. Box 2615
Seattle, Washington 98111

An Employer Withdrawal Liability Payment Due Notice is enclosed. One copy of the notice should be returned with your payment to insure proper credit to your account.

Request for Review

No later than 90 days after you receive this Notice, you may request in writing that the Fund review any item relating to the determination of your withdrawal liability or of the schedule of your Annual Payments. During this period you may identify in writing any errors in the determination of your allocable share of the Plan's unfunded vested benefits and may furnish the Fund with additional relevant information, if any. Your request for review must be sent to:

Mr. N.J. Moran, Associate Coordinator
Office of the Administrative Manager
Western Conference of Teamsters Pension Trust Fund
2323 Eastlake Avenue East
Seattle, Washington 98102

If you file a timely request for review with the Fund, the Fund, after a review of any matter raised, will notify you in writing of its decision, the basis for the decision, and the reasons for any change in your withdrawal liability or schedule of Annual Payments.

Arbitration

Your right to dispute any determination made by the Fund concerning your withdrawal liability will be lost unless you first file a timely request for review with the Fund as described above and then initiate arbitration within 60 days after the date the Fund notifies you of its decision on the matters raised in your timely request for review, or if earlier, within 180 days after the date of your timely request for review to the Fund.

Page Three

Even if you request a review or if you initiate arbitration in accordance with the procedures outlined above, you are still required to make your periodic withdrawal liability payments as set forth in this Initial Notice regardless of the pendency of any request for review or arbitration proceeding. If you fail to make any withdrawal liability payment when due, liquidated damages, interest and attorneys' fees will accrue on the unpaid amount at the rate applicable to delinquent employer contributions (see Trust Agreement, Art. IV, S 3).

The city in which any such arbitration would be held is as indicated on the enclosure herewith, subject to your rights to seek a change under the Plan's withdrawal liability arbitration rules.

Default

Amounts determined to be in default will be referred to legal counsel for collection, in which case you also will be liable for the Fund's reasonable attorneys' fees and costs. In the event of your default, the Fund, at its option, may require immediate payment of the entire outstanding amount of your withdrawal liability, plus accrued interest on the total outstanding liability from the due date of the first payment which was not timely made. Events of default are defined in Section 16(c)(5) of the Fund's Employer Withdrawal Liability Rules and Procedures and include (among other events) the failure of the employer to make when due any withdrawal liability payment, if the failure is not cured within 60 days after the employer receives written notification from the Fund of such failure.

Any amount finally determined to have been paid by you in excess of your withdrawal liability to the Fund will be repaid to you, together with appropriate interest.

A copy of the Agreement and Declaration of Trust of the Western Conference of Teamsters Pension Trust Fund, which includes the Fund's Employer Withdrawal Liability Rules and Procedures, is enclosed for your information.

Sincerely,

Judie Turner

Judie Turner
Contract Supervisor

:jar:9

enclosure
n

WESTERN CONFERENCE OF TEAMSTERS PENSION TRUST FUND
EMPLOYER WITHDRAWAL LIABILITY DETERMINATIONS
FOR COMPLETE WITHDRAWALS IN 1980

Name(s) of Employer(s) (employers under common control):

American Lumber

Withdrawal Date: May 1980

Employer Pension Account Number(s) - Accounts under common control ("affiliated accounts):

015450

1. Withdrawal Liability Amount for a Complete Withdrawal:

Years (Inclusive)	Employer's Contributory Hours All Affiliated Accounts	Employer's Required Contributions All Affiliated Accounts
1975	<u>15,550</u>	<u>\$4,976.60</u>
1976	<u>14,532</u>	<u>\$6,055.00</u>
1977	<u>15,227</u>	<u>\$8,200.20</u>
1978	<u>19,414</u>	<u>\$10,888.05</u>
1979	<u>22,236</u>	<u>\$17,214.16</u>
A. Sum of all contributions required to be made by the employer under the Plan, 1975 through 1979:		<u>\$47,361.51</u>
B. Sum of all contributions made, 1975 through 1979, by all employers who had an obligation to contribute under the Plan in 1980 and had not withdrawn before April 29, 1980:		<u>\$1,389,157.12</u>
C. Factor for Employer's prorata share of unfunded vested benefits ((A) ÷ (B)):		<u>.00003412493</u>
D. Total Amount of Plan's Unfunded Vested Benefits as of 12-31-1979:		<u>\$1,562,924.00</u>
E. Employer's prorata share of Unfunded Vested Benefits ((1C) X (1D)):		<u>\$53,350.15</u>
F. Less De Minimis Offset:		<u>\$50,000.00</u>
G. Employer's Withdrawal Liability amount for a Complete Withdrawal After DeMinimis Offset ((E) - (F)):		<u>\$3,350.15</u>

- H. Adjustment for transfer of liabilities (Rules S 10(b)): ☒ Not Applicable
☐ \$ _____
- I. Adjustment for withdrawal following plan merger (Rules S 10(c)): ☒ Not Applicable
☐ \$ _____
- J. This withdrawal is not a qualifying sale of assets withdrawal (Rules S 4).
- K. Employer's withdrawal liability before adjustment under Rules SS 16, 18: \$3,350.15
- L. Adjustment to reflect limitation of annual payments (Rules S 16): ☒ Not Applicable
☐ \$ _____
- M. Adjustment to reflect any limitation on withdrawal liability under Rules S 18: ☒ Not Applicable
☐ \$ _____
- N. Employer's Withdrawal Liability amount for a complete withdrawal, after all adjustments: \$3,350.15
2. Annual Payment Amount for a Complete Withdrawal
- A. Employer's average annual number of contributory hours for three highest consecutive years from 1975 through 1979: 18,442
- B. Employer's highest contribution rate required from 1976 through 1980: \$.91
- C. Employer's Annual Payment Amount ((2A X (2B))): \$110,912.22
- D. Monthly Installment Payment ((2C) ÷ 12): \$9,242.69
3. Is this a Complete Withdrawal?
- ☒ Yes (Complete Item 4 below)
- ☐ No (Complete and attach "Adjustment for Partial Withdrawals" worksheet)

4. Payment Schedule

- A. Amortization of your employer withdrawal liability amount in accordance with the January 1, 1980 Actuarial Valuation of the Plan requires you to make monthly payments in the amount shown on Line 2.D. for 2 months with the final payment of \$ 50,177 due on March 10, 1981.
- B. Your payment of \$ 3,350.15 is due on April 10, 1982 which is sixty (60) days after the date of this notice.
- C. An Amortization schedule is enclosed.

5. The Place of any Arbitration

- A. Names and addressed of the depository banks to which the employer was obligated to remit contributions during some part or all of the calendar year preceding the calendar year of withdrawal: First Interstate Bank
P.O. Box 39031, Rincon Annex
San Francisco, CA 94139
- B. City in which any arbitration would be held, subject to the employer's right to seek a change under the withdrawal liability arbitration rules: San Francisco.

STATEMENT OF TEAMSTERS FOR A DEMOCRATIC UNION

Teamsters for a Democratic Union (TDU) is a nationwide organization struggling to reform the Teamsters Union and make it more responsive to the needs of the members. Today, TDU has a membership exceeding 8,000, organized into nearly 50 chapters across the country. We reach approximately 60,000 Teamsters through our newspaper, CONVOY DISPATCH.

Teamsters for a Democratic Union has reviewed the Multi-employer Pension Act of 1981 (S-1748) and offers the following comments.

The Multiemployer Pension Plan Stabilization Act of 1981 (S-1748) represents a very simple, practical scheme for everyone -- everyone, that is, except the participants and beneficiaries whose vested retirement benefits have been completely ignored.

The Employee Retirement Income Security Act of 1974 (ERISA) adopted a sweeping overhaul of pension rules. A cornerstone of the legislation was the establishment of the Pension Benefit Guaranty Corporation (PBGC) to insure pension benefits against plan failure. Under this system a portion of each employer's pension contribution goes to the PBGC as insurance premiums. Congress soon realized that the insurance system, while effective for single-employer plans, created incentives for employers in multiemployer plans to get out of troubled plans, leaving remaining employers with intolerable liabilities, and consequently impending plan insolvencies. As a result Congress passed the

Multiemployer Pension Plan Amendments Act of 1980. The Act's primary objectives are to make sure that plans collect sufficient funds to pay benefits and to provide insurance for plan insolvencies resulting from sustained declines in covered employment. The Act attempts to prevent "free rider" withdrawals and hence stave off plan insolvency by creating a "withdrawal liability" requiring that employers who partially or completely drop out of a plan continue making payments to the plan for a set period of time to better insure that employees covered by the plan will in fact be able to collect pension benefits when they retire.

Solvency of pension plans and their ability to pay promised benefits is a serious problem. A joint DOL and Treasury study revealed that in 1972 alone, more than 15,000 pension plan participants lost retirement benefits because their pension plans terminated with insufficient assets to meet all plan obligations. These losses amounted to more than \$40 million in anticipated incomes. Several thousand victims actually lost every cent of their earned pension. The PBGC's 1978 multiemployer study found that about 10% of the multiemployer plans, covering 1.3 million workers, were experiencing financial difficulties that could result in plan termination within ten years.

With the economy's recent deterioration, multiemployer plans and Teamster plans in particular have been especially hard hit. A recent GAO study expressed doubts about the stability of the Central States Plan. The report stated that the plan had unfunded

vested liabilities of \$3.6 billion. This represents unfunded obligations of over 500,000 active and retired Teamsters and their beneficiaries.

The Multiemployer Stabilization Act of 1981, if passed, would eliminate not just the liability of the employers who withdraw from multiemployer plans but also all insurance protection for the 8 million employees and retirees who participate in these plans. It would return the responsibility for the protection of benefits back to the "freedom of the collective bargaining system." The Central States plan, with over \$3.6 billion in unfunded vested benefits, is the prime example of how inadequately that unfettered system has worked in the past, and how poorly it may work in the future.

The proposed legislation is one prong of the American Trucking Association's campaign to dismantle pension legislation. The proffered arguments are basically the same ones rejected during the hearings held on the Multiemployer Pension Plan Amendments Act of 1980. Legislation, incidentally, which was supported by a broad coalition, including the U.S. Chamber of Commerce, the National Association of Manufacturers, over 140 unions and the PBGC.

Proponents justify S-1748 on the grounds that the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA): a) disrupts normal business practices, i.e., it unfairly burdens and

hinders companies from moving from the jurisdiction of one pension plan to that of another, from becoming nonunion, from going out of business or from selling the company's assets; and b) acts as a disincentive for new employers to join plans. Proponents offer little empirical evidence in support of their arguments. Indeed, the facts offered seem to belie the truth.

First, under the MPPAA plans have wide latitude in selecting a method for allocating unfunded vested benefits. The Act contains four statutorily preferred methods and allows plans to adopt alternative methods for allocating liability, as long as the method adopted would not significantly increase the risk of loss to plan participants, beneficiaries or the PBGC. Under one of the preferred methods a new employer is not liable for any changes in unfunded vested benefits in years prior to the year in which the employer joined the plan. Plans worried that new employers will not join the plan could alleviate much of the problem by using this method.

Secondly, the MPPAA contains several other sections which ease the burden on employers. The "deminimus rule" eliminates the burden on small employers and employers who have had only limited contact with a plan. Under the "abatement" rules withdrawal liability is reduced or eliminated if the employer contribution base is restored.

Thirdly, withdrawal liability is not due in a lump sum,

but instead is payable over time. The payment schedule in certain situations can take up to twenty years. The amount of the liability is to be roughly in line with the employer's level of contributions before the withdrawal so that the cash outlays should be similar to previous years contributions. If there are substantial differences then this subcommittee should examine the specifics of the problem rather than eliminate the protections offered by the MPPAA.

Employees have relied on the promises that they will receive pensions once they have met certain requirements. Withdrawal liability is the statutory mechanism to ensure that those retirement income promises are met. As mentioned before, plans have much flexibility in determining the amount of employer liability. If an employer's liability under the MPPAA is out of proportion then the plan is using a method that is unfair to that employer. Rather than a broadside attack on legislation, employers should look to the plan to use more equitable withdrawal rules then, if necessary, to Congress to narrow the "flexibility" in the legislation.

The other employer contention is that the rules were changed in the middle of the game; that they originally believed that they would not have to fully fund vested benefits. Connolly v PBGC should have destroyed the "we never bargained for benefits" argument. There the Ninth Circuit held that multiemployer plans are "defined benefit" plans. Unlike

"defined contribution" plans these plans have never based benefits on the contributions made on each participants behalf. Moreover, employers should not be able to escape liability by contending that unions control the benefits. Employers have been represented on each multiemployer plan's board of trustees in equal numbers to the union trustees since the passage of Taft Hartley Act in 1947. If employers chose in the past or choose now to abdicate their responsibilities thereunder and thus to forego the opportunity to keep benefit promises in line with contributions, then the problem is essentially theirs, not the unsuspecting employees' who were not in a position to even know the plan's funding status.

Proponents of S-1748 speak of the "catastrophic effects" of the current law on pension plans. They state that hundreds of trucking concerns represented by the Teamsters have already met their demise and that others are approaching the "brink of disaster". They insinuate that much of the problem is the result of the withdrawal liability provisions of ERISA. Persons familiar with the trucking industry know that nothing could be farther from the truth. The deregulation of the industry and the current economic crisis have been the real culprits which have forced these companies out of business. ERISA's only role is to ensure that the companies, where possible, pay their share of vested pension benefits that are unfunded at the time of withdrawal. The plan's claim for the first 1/2 of this amount enjoys only the same rights as other general unsecured claims.

The remaining half of the liability is limited to the value of the assets available after the employer's other debts have been paid.

Insurance protection for retirees and those about to retire is an absolute necessity. These are people -- truck drivers, painters, garment workers, printers, etc. -- who in the vast majority of cases are in desperate need of the money, who have relied on the promises made to them by the plan and who have very little way of knowing how ephemeral the promises can be. Before ERISA employees and retirees were the only ones who suffered. Under ERISA and the MPPAA the risk is in fact shared by employees and retirees along with employers. S-1748 would eliminate withdrawal liability, and place all the risk back on the participants and beneficiaries.

The choice is whether to allow pension plans to terminate with very harmful effects for participants or to try to devise a termination insurance program that will protect them against loss of vested pension benefits. Congress has decided in favor of the latter. This position has received broad public support. Efforts to repeal the withdrawal liability and insurance sections of ERISA are misguided. The issue is no longer, as Senator Hatch proposes, whether we should have such programs, but how to design a program that assures benefits and is feasible.

STATEMENT OF BENNETT MARK ON BEHALF
OF EBERHARD FOODS, INC. SUBMITTED
TO THE SUBCOMMITTEE ON LABOR,
SENATE LABOR AND HUMAN RESOURCES COMMITTEE

My name is Bennett Mark. I am President of Eberhard Foods, Inc. (Eberhard). Eberhard is a Michigan corporation, operating 40 retail grocery stores in the Western Michigan area. I am submitting this statement to express Eberhard's support for S. 1748, the Multiemployer Pension Plan Stabilization Act of 1981, and to further express Eberhard's opinion that the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA) is destructive, unconstitutional, unworkable and ill-advised, to Eberhard, the business community and multiemployer pension plans. While my statement emphasizes the effect the MPPAA has on Eberhard, the problems discussed are common to the business community as a whole.

EBERHARD'S RELATIONSHIP WITH THE UNION
AND THE UNION'S PENSION PLAN

Some of Eberhard's employees are represented by the Retail Store Employees Union, AFL-CIO, now known as the United Food and Commercial Workers (Union). Pursuant to successive collective bargaining agreements between Eberhard and the Union, Eberhard made contributions to the Retail Store Employees Unions AFL-CIO and Food Employers Joint Pension Fund (Fund). The Fund is a multiemployer plan and is administered pursuant to a Plan and a Trust Agreement. Eberhard's collective bargaining agreements with the Union provided for contributions to the Fund from 1963 to August 1, 1981. Each of the successive collective bargaining

agreements, up to August 1, 1981, provided for Eberhard to contribute to the Fund a specified cents-per-hour for each hour up to 40 hours per week which each Union employee worked. From 1963 to August 1, 1981, Eberhard contributed approximately \$1,500,000 to the Fund. The last collective bargaining agreement between Eberhard and the Union requiring contributions to the Fund was entered into in July, 1978, and expired on August 1, 1981.

The collective bargaining agreements and the Fund's Trust Agreement and Plan all limit Eberhard's liability to the Fund to making the contributions set forth in the collective bargaining agreements. There is no guarantee of any level of benefits. The benefit levels are set by the Fund trustees. In fact, the Fund's Trust Agreement states that the Fund's trustees "shall not have the authority to modify the contractual obligations of the Employers and unions, including modification of the contributions owing under said collective bargaining agreements." The Fund's Trust Agreement further states that "the Employer's obligation for payment to the trust fund shall be in accordance with the provisions of the collective bargaining agreement and shall not be enlarged by any rules, regulations or determination of the Trustees pertaining to employee eligibility." The Trust Agreement states that "liability of each Employer shall be limited solely to the payment of the amount designated in the applicable collective bargaining agreement." Finally, the Fund's Trust Agreement states that "[i]n the event the Trust Fund shall be insufficient to provide the benefits established from time to time the Trustees

may alter or eliminate such of the benefits or insurance as they may deem advisable, as permitted by law."

The limitation of employer liability to contributions agreed upon in collective bargaining agreements has always been the basis upon which employers have agreed to contribute to union sponsored multiemployer pension plans. Without such a limit on liability, employers would have rarely, if ever, agreed to contribute to union multiemployer plans. If employers were aware of potentially large liabilities over and above agreed upon contributions, they would have established their own individual, single-employer pension plans over which some control would exist. Certainly, Eberhard would not have agreed to contribute to the Fund if it had known that it might some day be obligated for unpredictably large sums in addition to the agreed contributions.

In the summer of 1981, Eberhard and the Union negotiated for a new collective bargaining agreement to succeed the collective bargaining agreement covering the period from August 1, 1978, through July, 1981. The 1978-81 collective bargaining agreement provided for contributions to the Fund at a set cents-per-hour rate. However, in the new collective bargaining agreement covering the period August 1, 1981, through July, 1984, the Union employees agreed to participate in Eberhard's Employee Stock Ownership Plan (ESOP), in lieu of continuing participation in, and contributions to, the Fund. The ESOP is a single-employer plan regulated by ERISA. The new collective bargaining agreement was approved by the Union employees by approximately a 3 to 1 margin at the first ratification meeting.

Under the ESOP, Eberhard contributes not less than 10% of each participating employee's gross yearly earnings into the employee's ESOP account. This rate of contribution exceeds that required in previous collective bargaining agreements for contributions to the Fund. Furthermore, vesting occurs earlier under the ESOP than under the Fund, and many employees are already fully vested under the ESOP because they received credit on the vesting schedule for prior years with Eberhard.

THE MPPAA AND RESULTING PROBLEMS

On September 26, 1980, two-thirds of the way through the term of the last collective bargaining agreement providing for Eberhard to make specified contributions to the Fund, the MPPAA was passed by Congress. Under ERISA, prior to the MPPAA, employers who withdrew from a multiemployer pension plan were subject to a liability only if the entire multiemployer plan terminated within five years of the withdrawal and even then, only if the plan was underfunded. Thus, Eberhard would be subject to no liability upon withdrawal from the Fund unless the entire Plan terminated within five years (which is unlikely), and unless it was underfunded at that time. These pre-MPPAA provisions controlled in July, 1978, at the time Eberhard and the Union negotiated and signed the collective bargaining agreement which bound all the parties until August 1, 1981.

The MPPAA drastically changed the law and, if given legal effect, will abrogate the contract rights and obligations of Eberhard under its collective bargaining agreements. An employer who withdraws from a multiemployer pension fund under the MPPAA is

directed, for the first time, to pay a "withdrawal liability," which purportedly is based on an allocable share of the unfunded vested benefits of the multiemployer fund. A "complete withdrawal" occurs whenever an employer ceases to have an obligation to contribute to the fund under the applicable collective bargaining agreements. When an employer withdraws, the MPPAA requires the multiemployer fund to calculate the amount of the total unfunded vested benefit liability for employees of all contributing employers, to allocate a proportion of these unfunded vested benefits to the withdrawing employer, and to demand payment of that asserted "withdrawal liability."

Whether a benefit is "vested" or "forfeitable" depends upon the provisions of the plan, or overriding provisions of ERISA. However, the level or amount of benefits is a decision entrusted solely to the trustees of the fund. If the trustees decide to increase benefits and thereby increase the amount of unfunded vested benefits, they have the power under the MPPAA to unilaterally increase the amount of a withdrawing employer's "withdrawal liability."

A fund's "unfunded vested benefit liability" is the difference between the value of the fund's assets and its vested benefit liability. The Fund reported that its total vested benefit liability as of March 31, 1980, was \$160,271,200, that its net assets at that time were \$88,187,900, and its unfunded vested benefit liability was \$72,083,300. It is important to realize that the "unfunded vested liability" does not relate to a fund's ability to meet its current obligations or obligations in the

reasonable future. For example, the Fund in this case for the year 1979 received contributions that were almost three times the amount of benefits paid. Indeed, the rate of return on the Fund's investments exceeded the amount of benefits paid, so that the Fund's assets actually increased by approximately \$15,000,000.

Many factors such as ERISA's vesting rules, amortization periods, the inclusion of past service credits, and the month by month fluctuation of the economy account for and contribute to the substantial spread between total assets and total vested benefit liabilities in multiemployer funds. One primary reason for the spread is the conflict between the ability of the trustees to unilaterally increase benefits and the limitation of the employer's contribution liability to the amounts fixed by the collective bargaining agreement and the employer's specific protection against guaranteeing or funding any specific benefit level. For example, the Fund's trustees in 1980 raised the benefit levels causing a sixteen percent increase of \$12,000,000 in the unfunded vested liabilities. This increase in turn raised Eberhard's withdrawal liability, all without Eberhard or its employees having any input in the decision to increase benefits or any effective redress from that fact.

The computation of the "unfunded vested liability" depends on the application of actuarial assumptions on what will happen in the long term future. The MPPAA allows broad leeway in choosing these assumptions, the only requirement being that they not be "in the aggregate, unreasonable." The MPPAA also allows a fund to choose any one of the four ways of calculating an employer's

withdrawal liability. The Fund used the presumptive method which basically allocates the Fund's unfunded vested benefits to Eberhard in the same proportion that Eberhard's contributions over the last five years bears to the total contributions over that period.

Acting pursuant to the MPPAA, the Fund determined that Eberhard withdrew from the Fund as of August 1, 1981, because Eberhard no longer had an obligation to contribute to the Fund, and the Fund determined that Eberhard's withdrawal liability was \$1,284,100. The withdrawal liability is approximately 22% of Eberhard's entire net worth and 3.4 times its net earnings last year. It exceeds the total amount of Eberhard's contributions during the five year period of 1977-1981. Even on the annual payments level of \$326,500, the withdrawal liability demanded by the Fund is 85.8% of Eberhard's net income for its last fiscal year and 2 1/2 times its net income for the fiscal year prior to last year. Moreover, this amount is over and above the amount that Eberhard is required to pay to the ESOP covering those employees previously covered by the Fund.

If the employer disputes the fact or amount of the liability due, the statute requires that the dispute be submitted to compulsory arbitration. The statute, however, expressly directs that payments must be made by the employer as scheduled by the fund pending the outcome of the arbitration and, indeed, payments are required before the employer has any opportunity to contest the claim. In the required arbitration proceeding, "any determination made by a [fund] is presumed correct unless the party contesting

the determination shows, by a preponderance of the evidence, that the determination was unreasonable or clearly erroneous." If no request for arbitration is made by either party, these presumptively correct determinations are given conclusive effect.

An action may be brought "in an appropriate United States District Court to enforce, vacate or modify the arbitrator's award." In that proceeding the employer must overcome yet another presumption because the employer is limited to "rebuttal only by a clear preponderance of the evidence, that the findings of fact made by the arbitrator were correct."

THE EFFECT ON EBERHARD

The effect on Eberhard of the withdrawal liability imposed by the MPPAA is both negative and unconstitutional.

Eberhard employees and the Union agreed during the last collective bargaining negotiations to make the employees participants in Eberhard's ESOP, in lieu of continued contributions and participation in the Fund. Eberhard's ESOP is a tax qualified plan, regulated by ERISA, that provides a substantially better benefit to the employees than does the Fund. However, Eberhard has been caught in the maze of the MPPAA, with its numerous blind alleys.

The imposition of \$1,284,100 of withdrawal liability is certain to have a negative and irreparable effect on Eberhard's financial condition. In these economic times, no company the size of Eberhard can endure the loss of \$1,284,100. The substantial drain upon Eberhard's cash flow, working capital, and ability to obtain credit are obvious. In fact, it is impossible at this

point to determine the details of the enormity of the injury, except that it will indeed be onerous. And, it should be remembered that the withdrawal liability demanded is on top of Eberhard's current obligation to contribute to the ESOP. It is estimated that the ESOP obligation for the Union employees will be approximately \$500,000 in the current fiscal year.

While the financial effects are severe, there is something else equally important at stake. Eberhard is relegated to the procedures in the MPPAA for the resolution of withdrawal liability disputes, irreparably depriving its constitutional rights. Eberhard's property will be taken prior to a judicial hearing on the basis of a determination by an interested, biased party -- a determination which the statute presumes to be legally correct and enforceable. There is no prompt post-deprivation hearing. The MPPAA mandates an eventual post-payment arbitration proceeding, which itself violates Eberhard's rights to a trial by jury. Moreover, Eberhard in the arbitration proceeding, never has the opportunity to raise its substantive due process challenges to the retroactive application of the MPPAA.

As a result of the financial and unconstitutional hardships imposed upon it, Eberhard has been forced to file suit in United States District Court, along with approximately 70 other companies, for a declaration that the MPPAA is unconstitutional. Eberhard's lawsuit, filed on January 15, 1982, is similar to the seventy-plus other cases filed across the country. Eberhard's position that the MPPAA is unconstitutional may be summarized as follows:

1. The MPPAA impairs Eberhard's existing contractual relations as contained in its collective bargaining agreements in violation of the due process clause of the Fifth Amendment to the United States Constitution.
2. The retroactive nature of the MPPAA violates the due process clause of the Fifth Amendment to the United States Constitution.
3. The presumptive method of computing withdrawal liability, applied to Eberhard, violates the due process clause of the Fifth Amendment to the United States Constitution because it is an arbitrary and unreasonable means of imposing liability on a withdrawing employer.
4. Imposition of withdrawal liability under MPPAA violates the Fifth Amendment to the United States Constitution because it results in a taking of private property for public use without payment of just compensation.
5. MPPAA's procedures violate procedural due process under the Fifth Amendment of the United States Constitution in the following respects:
 - a. The initial determination of withdrawal liability is made by a biased decision-making group - the trustees.
 - b. Eberhard is deprived of its property interest without a prior hearing based on the initial determination of a biased non-governmental body.
 - c. The procedures for review of the trustees' initial determination by arbitration and by a federal district court are inadequate because the trustees' initial decision is presumed correct unless

Eberhard rebuts it by a preponderance of the evidence.

- d. The compulsory arbitration scheme requires Eberhard to bear additional costs and meet a higher burden of proof, and delays and impairs its ability to obtain complete judicial review of all issues in dispute.
6. The statutory procedure in the MPPAA involving non-judicial fact finding violates the right to a jury trial under the Seventh Amendment to the United States Constitution.

CONCLUSION

Even beyond the negative and unconstitutional effect of the MPPAA on Eberhard, the statute is truly ironic in its operation, both as to Eberhard and the multiemployer pension fund it seeks to protect. The MPPAA forces Eberhard to suffer financial hardship and deprivation of constitutional rights while the Fund receives a windfall gain in the form of withdrawal liability which is not needed to maintain the financial health of the Fund. Ironically, the Fund is financially healthy and more than meets ERISA's minimum funding standards. The further irony is that Eberhard's employees are now in Eberhard's ESOP which provides a better benefit than the Fund. Finally, it is generally recognized now, even by many of the multiemployer pension plans, that the MPPAA will ultimately, and in the long run, lead to the downfall of such pension plans. The only way such plans remain healthy is through a steady influx of new employers, replacing the drain of withdrawing employers. Under the MPPAA, there will be very few new employers joining multiemployer plans. The result will be a

net decrease over time and the ultimate demise of such multiemployer plans.

Eberhard supports S. 1748 as an answer to the many problems of the MPPAA. S. 1748 will restore multiemployer pension plans to what they were originally intended, and contracted, to be by all parties, both unions and employers -- fixed contribution pension plans.

Date: March 29, 1982

Bennett L. Mark
Bennett Mark, President
Eberhard Foods, Inc.

STATEMENT OF THE AMERICAN SOCIETY OF PENSION ACTUARIES

The American Society of Pension Actuaries is a national, professional Society whose 1,800 members provide actuarial, consulting and administrative services to approximately 25% of the qualified retirement plans in the United States. We advocate that Congress enact legislation providing relief for employers and plan participants where a voluntary decertification from a particular union is undertaken by a given company's employees. Furthermore, we feel Congress should enact legislation mandating transfers of assets or liabilities from multiemployer to single employer plans when a voluntary decertification occurs and the employer establishes a plan which promises benefits at least equal to benefits which have accrued for all such employer's participants under the multiemployer plan.

Employers have no control over whether or not a group of its employees will voluntarily decertify from a union. However, if that group does decertify, and if the company is a contributing employer to a multiemployer plan, that company can be left holding a bag of unfunded vested benefit liability. To illustrate this point, we have enclosed information which details developments in one company's case. This company is a small metal stampings firm in Cleveland, Ohio, which found itself in the unenviable position of having its employees decertify from a Teamster local. The company contributed to a multiemployer plan from October, 1972 through September, 1981, and the total assets attributable to the company's contributions, earnings, and reduced by its share of expenses is estimated to be \$594,547. Nevertheless, because of the structure of the current Multiemployer Pension Plan Amendments Act, the company received a bill for payment of its share of unfunded vested benefit

liability in the amount of \$302,100. Thus, the company has fulfilled its contribution obligations but because of a voluntary decertification it will have lost about \$900,000 (\$594,547 + \$302,100) and virtually all the company's employees have lost accrued benefits under the Teamsters' plan. This company did not want any of its employees to suffer loss of pension benefits as a result of decertification, and therefore commissioned establishment of a new plan which would duplicate all benefits under the prior Teamsters plan. Calculations indicate that to provide full accrued benefits for all current employees, the company would have to contribute \$290,512 to make up all past service costs. It should be noted this is approximately one-half the total assets attributable to the company's net contributions (\$594,547) to the Teamster plan. As if this were not enough, to have been hit with a \$302,100 bill for unfunded vested benefit liability smacks of grossly unfair treatment.

If companies like this were allowed to receive from a multiemployer plan its allocable share of assets upon voluntary decertification, the company could have doubled the past service credits for employees and been in a position to have to fund future service credits only. Transfers between multiemployer plans and single employer plans is allowed in ERISA Section 4232, but it is not mandated.

Employers and plan participants are the ones ultimately hurt in a voluntary decertification situation. At the very least, an employer should not be obligated to pay withdrawal liability in the event of a voluntary employee decertification, and it seems appropriate and fair to mandate a transfer of assets and liabilities from a multiemployer plan to a single employer plan which duplicates benefits provided under the multiemployer plan.

We would be happy to provide any additional information relative to this subject area.

Union pension restrained at stamping firm

By Elizabeth Sullivan
Cleveland Metal Products Co., a small metal stampings firm in the Flats, has embroiled itself in a growing national controversy over 1980 amendments to a 1974 pension reform act and has struck a blow against Teamsters Union Local 507 here in the process.

U.S. District Judge John M. Manos yesterday restrained for the next ten days Local 507's pension fund and Local 507 Secretary-Treasurer Jackie Presser from trying to collect the first installment of \$302,100 in withdrawal liability they figure is owed the fund by Cleveland Metal under the 1980 amendments.

The first payment, \$51,888, was due Jan. 1, 1982. Manos yesterday set a hearing for Jan. 4, 1982, on the company's request for a preliminary injunction, and asked Cleveland Metal to post a \$250 bond.

The request for withdrawal liability followed a Sept. 30 decertification of the union by Cleveland Metal's 42 hourly workers. It represents the pension fund's figuring of how much Cleveland Metal might owe toward future retirement benefit payments.

The company, in conjunction with nearly 40 other plaintiffs in U.S. court cases around the country, argues the process as well as the 1980 amendments violate due process and other constitutional rights.

That's in part because the law was passed before an existing labor contract had expired, meaning terms of pension fund payments and administration

were already negotiated and couldn't be changed.

"Any employer would have to be out of his mind to sign" a contract using a multi-employer plan, given the new law making all employers jointly liable for unfunded liabilities, said Cleveland Metal President John D. Strazzanti.

Unlike many of the other cases, the matter here followed a decertification vote rather than outright bankruptcy by a company.

In 1972, Local 507 had organized the then 200 hourly workers at Cleveland Metal, after a bitter and violent six-week strike.

This September, the plant's workers, drastically reduced in number because of the auto and appliance industry slumps, voted to decertify Local 507. The union lost 8-32, with two challenged ballots — not enough to change the outcome.

Subsequently, the \$15 million fund, administered jointly by a union and an employer trustee, determined Cleveland Metal's \$302,100 withdrawal liability and set a quarterly payment schedule.

"This may be breaking the camel's back," said Strazzanti. "Business is very poor right now, which is why we don't need this. We don't have that kind of cash flow. It could put a lot of people on the street."

Peter Halbin, a spokesman for Presser, said Presser "was simply following his responsibility within the law, and perhaps the president

Continued on Page 8-D

Cleveland Metal wins restraint of Teamsters pension fund

Continued from Page 7-D
of the company doesn't understand the law."

According to the federal Pension Benefit Guaranty Corp., which administers the 1974 pension reform act, at least 37 other related suits are pending, but no definitive judgments have been issued.

The two trustees of Local 507's pension fund, according to Labor Department filings, are Harold Friedman, Local 507 president, and Ray F. Vacha, retired industrial relations director of Associated Industries of Cleveland, for which he represented bakeries in labor cases.

Vacha said yesterday he was secretary-treasurer of the pension fund. He said he thought Presser was the pension fund's chairman.

In 1979, according to Labor Department filings, Local 507's pension fund covered 4,480 people, 359 of them retirees. Employer contributions totaled \$4.9 million that plan-year, investment income was \$1.7 million, the plan paid

out \$935,236 to retirees, and recorded administrative expenses of \$359,022.

Net income was \$4.8 million and net assets \$15 million. Information on unfunded liabilities was not available.

Cleveland Metal's suit, filed Monday, questions the method of figuring the company's share of the unfunded liabilities. "We've contributed over \$800,000 into (the fund over the years)," said Strazanti, "but only had four or five retire."

The 1974 pension reform law gave the federal government unprecedented oversight powers over private pension funds and led to the much-criticized federal investigation of the Teamsters Central States pension fund.

Meanwhile, at least one bill is circulating in Washington seeking to revamp the 1980 amendments and related aspects of the 1974 law. It would apparently ease up on the unfunded liabilities obligation primarily by reducing the number of covered employers.

PROFESSIONAL PLAN ADMINISTRATORS, INC.

Pension Consultants, Actuaries and Administrators

44-1 ROCKSIDE ROAD

SUITE 210

CLEVELAND, OHIO 44131

PHONE: (216) 447-1884

January 27, 1982

Mr. John Strazzanti
Cleveland Metal Products Company
2015 Center Street
Cleveland, OH 44113

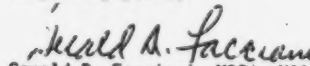
Dear John:

I am in receipt of the record of pension contributions made by Cleveland Metal Products to the Teamsters Local 507 Pension Fund, and we have calculated an estimated amount which is attributable to the Cleveland Metal Products Company's stream of contributions from October, 1972 through September, 1981. Our calculation procedure assumed all deposits earned 6% from October, 1972 to January 1, 1982, and we estimated expenses as 4-1/2% of beginning of the year assets for each year in question. Based upon these assumptions, we estimate total assets attributable to Cleveland Metal Products contributions, earnings, and reduced by its share of expenses to be \$594,547.

Please note the interest assumption was based on the assumed rate of interest for valuation purposes as reflected on the 1978 Form 5500 Schedule B signed by Leroy B. Parks, Jr. of the Wyatt Company, and the percentage expense estimate is based on total expenses reflected on Line 14(j)(v) of the 1978 Form 5500.

These calculations were performed by Rosalyn Schrank of our office, who is a Member of the American Academy of Actuaries and an Enrolled Actuary. Please let me know if you have any questions about anything contained in my letter.

Very truly yours,


Gerald D. Facciani, MSPA, MAAA
Pension Consultant, Enrolled Actuary

GDF:slk

Enclosure

Cleveland Metal Products Asset Estimate

1/1/72 assets	0
cost + int during '72	6650
1/1/73 assets	6650
cost + int on 1/1/73 assets	399
cost + int during '73	15749
* exp + int (1/2%) "	308
1/1/74 assets	22490
int on '74 assets	1349
cost + int '74	21919
exp + int '74	1042
1/1/75 assets	44716
int on '75	2623
cost + int '75	23682
exp + int '75	2073
1/1/76 assets	69014
int on '76	4141
cost + int '76	37931
exp + int '76	3199
1/1/77 assets	107887
int on '77	6473
cost + int '77	59571
exp + int '77	5001
1/1/78 assets	162930
int on '78	10126
cost + int '78	13384
exp + int '78	7820
1/1/79 assets	274620
int on '79	16477
cost + int '79	145401
exp + int '79	12729
1/1/80 assets	423769
* expenses estimated as 4.5% of beginning assets	

1/1/80 assets	423769
int on '80	25426
cost + int '80	90322
exp + int '80	19642
1/1/81 assets	519875
int on '81	31193
cost + int '81	67575
exp + int '81	24096
1/1/82 assets	594547

STATEMENT OF RONALD P. FORMENTO
ON BEHALF OF
THE DRIVER LEASING COUNCIL OF AMERICA, INC.
ON S. 1748

BEFORE THE
SUBCOMMITTEE ON LABOR
OF THE SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES

I

My name is Ronald P. Formento. I am President of Transport Drivers, Inc. of Bensenville, Illinois and President of the Driver Leasing Council of America, Inc. ("the DLCA" or "the Council"). The Council is a non-profit trade association organized under the laws of the District of Columbia. It was established in 1967 to further the interests of companies engaged in recruiting, screening, and employing qualified motor vehicle truck drivers who are then leased on a dedicated, long-term basis to private and regulated carriers who utilize and direct such drivers. The Council's members provide leased drivers for approximately 20.7% of all private carriers.

DLCA member companies pay all wages, fringe benefits, payroll taxes and Workmen's Compensation insurance for the drivers whom they lease to their customers. They also engage in collective bargaining with the drivers' representatives in unionized operations. Most DLCA members lease drivers to carriers whose operations are unionized, generally by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Many, if not all, DLCA members participate in multiemployer pension plans.

The Multiemployer Pension Plan Amendments Act of 1980 ("the MPPAA" or "the Amendments Act") has jeopardized the financial viability of the Council's membership. The MPPAA's impact on DLCA members is of vital interest to the Council. Therefore, the Council, which addresses all issues of concern to the entire driver leasing industry, respectfully submits at this time its statement in support of S. 1748 and other possible modifications to the MPPAA.

II

INTRODUCTION TO THE PROBLEM: REACTION TO MARKETPLACE CONDITIONS

The withdrawal liability provisions of the Amendments Act impair a business' ability to react successfully to changes in its economic surroundings. They especially frustrate motor private carriers and motor carriers regulated by the Interstate Commerce Commission (ICC) because the MPPAA unavoidably conflicts with the Motor Carrier Act of 1980 (the "MCA") and the new options it made available to private and regulated carriers .

The Motor Carrier Act of 1980 deregulated the trucking industry and extended to private and regulated carriers operational alternatives previously unavailable. Liberalized entry into the motor carrier industry, the augmentation of traffic exempt from the Interstate Commerce Commission's regulation and the designation of compensated intercorporate hauling as lawful private carriage have generally increased motor carriers' freedom and flexibility to adjust to the economic realities which they face. In addition, the MCA's amendment of the National Transportation Policy included a provision which emphasizes the promotion of productivity and efficient use of energy resources. Thus, the MCA was and is a dynamic legislative approach to changing economic demands perceived in the motor carrier industry.

The MPPAA confronts the MCA's emphasis on adaptation to prevailing circumstances with the encouragement of the status quo. It penalizes the employer who, in response to economic necessity, chooses a course of action which interrupts his contributions to any multiemployer pension plan. Thus, in many cases, the MPPAA takes away that which the MCA has given to operators of trucking fleets.

The withdrawal liability problem is dramatically heightened by a deepening recession which increases the need for keen business judgment and the flexibility to

implement that judgment in the pursuit of economic advantages. The pressure to adapt to changing circumstances in order to protect one's business interests continues to intensify. However, the possibility of large withdrawal liability assessments and their financially crippling effects will continue to inhibit necessary reactions to the dictates of the marketplace.

In addition, high labor costs in the trucking industry plague private and regulated motor carriers. Even with the new, recently ratified National Master Freight Agreement, labor costs in organized trucking operations will be approximately 30% higher than those in non-unionized motor carrier fleets. Burdensome operating costs impair a business' financial viability and lead to shut-downs and initiatives to cut labor costs which, in turn, exacerbate the withdrawal liability problem.

Because DLCA members deal frequently with both private and regulated carriers, they have seen the MPPAA's effects on the trucking industry. Indeed, the nature of the driving leasing business makes DLCA members dependent upon the economic health of the trucking industry. For instance, driver leasing companies enter into written lease agreements with the carriers to whom they provide drivers. These agreements are generally subject to termination upon notice (usually 30 days) by either party. When a customer cancels an agreement, the leasing company must often lay its drivers off due to a lack of available work. This predicament is only one way in which DLCA member firms incur withdrawal liability. Consequently, that which harms private and regulated carriers harms the driver leasing company.

III

EFFECTS ON DLCA MEMBERSSpecific Cases

The MPPAA's withdrawal liability provisions have already adversely affected a number of DLCA members. Liability assessments have placed some members in severe financial jeopardy. Others have calculated their potential withdrawal liability and expressed concern over its chilling effect on managerial flexibility.

One member suffered withdrawal liability after its customer cancelled a driver leasing agreement. After this cancellation took effect, the drivers employed by the member ceased the performance of their duties on behalf of the former lessee. At that point, the DLCA member had no available work for the drivers, whom he consequently laid off. This reduction in work force caused an interruption in contributions to the applicable multiemployer pension fund and, therefore, constituted a withdrawal.

Another DLCA member has reported a liability assessment following a transfer of its drivers out of the geographic area encompassed by the multiemployer pension fund in question. The member transferred these drivers because its customer utilizing the drivers' services transferred its operations from Pennsylvania to Chicago. Those drivers who were not transferred were laid off due to the resulting lack of available work in Pennsylvania. The reduction in contributions to the multiemployer pension fund located in Pennsylvania constituted a withdrawal and provoked the liability assessment.

A third DLCA member almost incurred withdrawal liability when its drivers petitioned for and won decertification of the Teamster local which had been its representative. This decertification resulted in the discontinuation of contributions to

the New York State Teamsters Conference Pension Retirement Fund as the collective bargaining relationship previously established was negated. However, the interruption in contributions was not sufficiently severe to precipitate a withdrawal under the MPPAA. A second decertification election involving workers covered by the same multiemployer plan is currently in dispute. If the drivers accomplish this decertification, withdrawal liability will ensue.

In each of the instances described above, the assessed or threatened withdrawal liability was faced by a DLCA member in a situation over which it had no control. Withdrawal liability precipitated by a customer cancelling an agreement or transferring his operations or by a unit of employees voting to decertify the union involved penalizes the driver leasing company for someone else's action or decision. This is patently unfair, but it is a potentially common abuse of the MPPAA's withdrawal liability provisions.

Circumstances In Which Withdrawal Liability Could Occur

Perhaps the MPPAA's most damaging effects are those related to corporate stagnation. The possibility of financially crippling liability assessments inhibits managerial freedom and thereby reinforces the status quo. DLCA members and other employers have become reluctant to implement proposals which would otherwise benefit their businesses when the potential for withdrawal liability exists.

The following discussion presents situations in which complete or partial withdrawal liability could occur in the driver leasing industry. These "hypotheticals" assume:

1. That the driver leasing company is a party to one or more collective bargaining agreements; and

2. That he consequently participates in at least one multi-employer pension plan covering his unionized employees.

This discussion will demonstrate how withdrawal liability can deter driver leasing companies from taking advantage of prevailing opportunities in order to cope with their economic environment.

Complete Shut-Down

The event which most clearly triggers complete withdrawal liability is the total shut-down. A driver leasing company which terminates its business operations necessarily ceases contributions to the multiemployer pension plan(s) in which it had participated. This would constitute at least one complete withdrawal, for which the resulting liability could be excessive.

Sale of Business

The driver leasing company which desires to sell its business must satisfy certain conditions to avoid immediate withdrawal liability. Specifically, it would need to:

1. Require that the buyer, which must be an unrelated party, contribute to the plan for substantially the same number of contribution base units for which the driver leasing company - seller was required to contribute;
2. Have the buyer provide for a period of five years a bond or escrow in an amount equal to the greater of the average annual contribution required of the seller for the three plan years preceding the sale, or the annual contribution that the seller was required to make for the last plan year before the sale. (This bond or escrow will be paid to the plan if the

buyer withdraws from the plan or fails to make a contribution to the plan when due at any time during the first five plan years following the sale); and

3. Provide in the contract for sale that if the buyer withdraws either completely or partially during the first five years and fails to pay the liability due, then the seller - driver leasing company will be secondarily liable for any withdrawal in the same amount which it would have incurred if these transfer provisions had not been invoked.

Thus, the sale of its business would place the driver leasing company - seller in a precarious position. First it would need to ensure the satisfaction of each condition described above in order to avoid withdrawal liability. Second the seller would remain secondarily liable for a period of five years, which would restrict its future business activities.

Moreover, these transfer conditions seriously impair any employer's ability to sell his business or assets. Prospective buyers might be reluctant to acquire a business with obligations to contribute to a multiemployer plan and the related possibility of withdrawal liability.

In fact, one DLCA member who is attempting to arrange a profit-sharing agreement with his employees and the eventual sale of his business to those employees has calculated a potential withdrawal liability of over \$400,000. This has stymied the company's efforts to implement its plan because the employer does not wish to incur this liability or saddle his employees with it. In this particular instance, the employer is dependent upon one large customer for the majority of his business and believes that there is a good chance that the customer will cancel the account. If such cancellation

were to occur, either he or his present employees, whoever owns the business at the time, would incur withdrawal liability.

In addition, a driver leasing company wishing to acquire a business which contributes to a multiemployer pension plan must consider the impact on its operations of accepting the existing contributory responsibility and the potential withdrawal liability. The necessity of posting a bond or escrow would further reduce the attractiveness of such an acquisition.

Employee Decision To Leave The Plan

Like decertification, a decision by a driver leasing company's employees to leave the multiemployer pension plan in effect would result in withdrawal liability. The employees might do so in favor of a potentially more beneficial private plan. In any event, the discontinuation of contributions to the multiemployer plan would lead to a liability assessment. Again, as with decertification, a voluntary decision by a company's employees to terminate their affiliation with a given multiemployer plan could impose severe financial penalties on the employer. This would be grossly unfair to both the employer and his employees.

Withdrawal liability assessments which impair the financial soundness of an employer could, in some instances, result in reduced wages (and or reduced wage increases), layoffs, or other economic adjustments not in the best interests of the employee drivers. A driver leasing company would, under these circumstances, be motivated not by vindictiveness or anti-union hostility, but by its own self-interest to survive during economically difficult periods.

In addition, the employer is stripped of any incentive to provide a better pension plan than the multiemployer plan in existence. Again, the employees suffer indirectly from the exercise of their free will. This consequence is contrary not only

to the intent of Congress when it enacted the Amendments Act, but also to the spirit of the entire body of federal labor law.

The employer would be also harmed unduly. He would suffer a financial loss caused by an event beyond his control. The MPPAA would penalize the driver leasing company whose drivers make their own decision for any reason to forsake a multiemployer pension plan.

Reduction In Work Force

Substantial reductions in an employer's work force due to a layoff or any other reason could lead to withdrawal liability. A layoff could result from the direct loss of an account to a competitor. This would presumably lead to a reduction in the employer's contributions to the multiemployer plan in question. The reduction in force could be severe enough to eliminate the driver leasing company's obligation to contribute to a given plan under one labor agreement or in one facility. This termination would constitute a complete withdrawal, provided that the facility or agreement were the only one covered under the given multiemployer pension plan.

The driver leasing company, on the other hand, might be a party to other labor agreements or operate other terminals or facilities covered by that plan. In either case, partial withdrawal liability would ensue. It is also possible that layoffs affecting less than any one whole unit of employees would be severe enough to reduce the company's contributory obligation by seventy percent over three successive years. This would also be a partial withdrawal.

Takeover Of Operations

One DLCA member has reported an interesting situation in which a private motor carrier to whom it has been leasing drivers since 1960 has requested that the company assume total employment responsibilities for these drivers. Although the

contributions were to continue, the posting of a \$54,000 bond was not approved and the private carrier has been hit with a \$500,000 withdrawal liability assessment. Thus, a driver leasing company which attempts to take over the employment of drivers and thereby expand its own operations can be halted by the MPPAA's withdrawal liability provisions.

DLCA'S SUPPORT OF S. 1748

The DLCA firmly supports S. 1748, Senator Orrin Hatch's bill which this Subcommittee is currently reviewing. The bill would exempt from Title IV of The Employee Retirement Income Security Act (ERISA) "fixed-contribution multiemployer pension plans" defined as those related to which collective bargaining agreements effective April 29, 1980, or the date of plan establishment, if later, set contribution levels and not benefit guarantees. Therefore, the bill would exempt from the MPPAA's withdrawal liability provisions many multiemployer plans now subject to such liability.

The DLCA supports S. 1748 for a number of reasons. First, it would help many DLCA member firms, which have negotiated contributions to multiemployer plans but never guaranteed any benefits. This exemption would cover the many DLCA member firms contributing to Teamster multiemployer plans.

Second, this would eliminate the confiscatory nature of the MPPAA's present withdrawal liability provisions. Employers, including driver leasing companies, which qualify for the exemption, would no longer be subject to the taking of their property without compensation and an opportunity to be heard in order to provide benefits to which the employer never agreed.

ALTERNATIVE SOLUTIONS

While the DLCA does support S.1748, it also recognizes that other solutions to the withdrawal liability problem exist. The DLCA desires the most comprehensive cure possible for the economic paralysis fostered by the MPPAA's withdrawal liability provisions. Therefore, the DLCA recommends to this Subcommittee the following additional or alternative solutions which could help to relieve employers of this unnecessary and unfair burden.

The Trucking Exemption

The MPPAA currently contains an exemption for the trucking industry. It applies to those plans in which substantially all contributions are made by employers in the long-haul and short-haul trucking industry, household moving industry, or the public warehousing industry. Withdrawals from such plans will not evoke liability if: (1) the Pension Benefit Guaranty Corporation (PBGC) determines that no substantial damage to the plan's contribution base has occurred; and (2) the employer posts a bond or escrow equal to 50% of its potential liability.

The vagueness of the term "substantially all contributions" has severely restricted the applicability of this exemption. The legislative history surrounding H.R. 3904, the House withdrawal liability bill which preceded the MPPAA, indicates that 85% of a plan's contributions must come from employees primarily engaged in the above referenced industries to satisfy the "substantially all" requirement of the trucking exemption. See 126 Cong. Rec. H. 7900 (daily ed. August 26, 1980). This has effectively removed many plans in the trucking industry from the scope of this exemption due to the contributions made to these plans by private carriers and other entities such as DLCA members who are not principally engaged in providing

transportation service. Thus, the term eliminates much of the relief which this statutory exemption could otherwise provide.

In addition, the PBGC is not given specific standards by which to judge whether the employer's withdrawal has caused substantial damage to the plan. The agency is apparently free to consider any number of factors in its determination of this issue and, therefore, it can restrict the applicability of this exemption without meaningful input from the employer involved.

Congress could improve the effectiveness of the trucking exemption by eliminating the prerequisite that the vast majority of contributions come from employers primarily in the trucking, household goods moving or warehousing industries. This would provide many business firms with at least the chance of obtaining relief from withdrawal liability under the trucking exemption.

Private trucking fleets are the predominant form of motor carriage in the United States. Trucks operated by private carriers greatly outnumber those of carriers regulated by the ICC. A trucking industry exemption which by definition removes private carriers from consideration is impractical and unfair; it ignores the realities of the motor carrier industry. DLCA members are significantly affected by the MPPAA's impact on private carriers because these members have such substantial dealings with private carriers. The widespread applicability of the trucking exemption to private carriers would help the DLCA and its members.

In addition, the imposition of fair, specific standards on the PBGC in its determination of substantial harm would give all parties concerned a better idea of whether a particular corporate action would result in a withdrawal. This would enable the employer who otherwise qualifies for the trucking industry exemption to review thoroughly all relevant considerations before making a decision concerning the

implementation of a given proposal. It would also remove from the PBGC the unbridled discretion to limit the scope of the trucking exemption.

By broadening the scope of the present trucking exemption, Congress would be giving effect to the idea which it legislated in 1980. Without a change in the current laws there is no real trucking exemption. The DLCA supports a meaningful exemption from withdrawal liability for motor carriers throughout the country.

The Trustee Problem

The severe problems caused by the MPPAA's withdrawal liability provisions stem from the fact that the liability, a share of the plan's unfunded vested benefits, can greatly exceed the amount of contributions negotiated by the employer. Benefits are set by the trustees who have the power to institute benefit levels far beyond the promised contributions of employers. These trustees are charged with the duty to act on behalf of employee-beneficiaries, with no significant regard to employer interests.

Section 302(c)(5) of the Labor Management Relations Act, 29 U.S.C. §141 et seq., as amended, excludes pension funds from the statute's restrictions against payments to employer representatives. It describes pension funds as being "for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents)". Section 302(c)(5) does provide for equal representation of employees and employers in the administration of pension funds.

However, the United States Supreme Court, in National Labor Relations Board v. AMAX Coal Co., A Division of AMAX, Inc., 453 U.S. ___, 101 S. Ct. 2789 (June 29, 1981), concluded that the trustee appointed by an employer need not, indeed should not, administer the fund in the interest of the employer. The Court emphasized

the fiduciary duties established by ERISA at 29 U.S.C. §1104, which states that "a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries". The Court strongly restated the trustees' "unwaivering duty" to protect the beneficiaries' interests "to the exclusion of interests of all other parties". The Supreme Court held that the language and legislative history of 29 U.S.C. §302 (c)(5) and ERISA demonstrate that a pension fund trustee is a fiduciary whose duty to the fund's beneficiaries must overcome any loyalty to the interest of the party that appointed him. Therefore, the trustees in multiemployer pension plans have the legal duty and authority to set benefits at levels which enhance the interests of the employees without regard to those of the employer. The Supreme Court recently reinforced this principle in United Mine Workers of America Health and Retirement Funds, et al. v. Robinson, 455 U.S. ___, 102 S. Ct. 1226 (March 8, 1982).

The employer who wishes to challenge the actions of pension plan trustees will receive very narrow judicial review, if any. The Courts have consistently held that the actions of trustees are proper unless they are arbitrary, capricious or without basis in law. The Courts give broad discretion to plan trustees to set benefit levels as they see fit and will rarely, if ever, second guess the trustees' decisions. See United Mine Workers of America Health and Retirement Funds, et al. v. Robinson, *supra*; Aitkin v. IP & GCU-Employer Retirement Fund, 604 F.2d 1261 (9th Cir. 1979); Seafarers Pension Plan v. Sturgis, 630 F.2d 218 (4th Cir. 1980); Rosen v. Hotel and Restaurant Employees and Bartenders Union of Phila, Bucks, Montgomery, and Delaware Counties, PA, 637 F.2d 592 (3d Cir. 1980) and Raemar v. Smith, 555 F.2d 1362 (9th Cir. 1976).

The Courts are unwilling to infringe in any way upon the trustees' broad area of discretion. Therefore, employers must turn to the Congress of the United States for relief.

The DLCA supports, in addition to S. 1748, the enactment of legislation which would restrain the presently unlimited discretion of trustees by injecting employer interests into the decision-making process. This could be accomplished by allowing trustees to set benefit levels to promote the interests of employees "after consultation with the employer or his representatives and within reasonable bounds considering the employers' contributory obligations." The exact language of such a provision would, of course, be a matter for Congressional decision. Congress could also make the employer-appointed trustee responsible for representing the employer's interests. The essential aspect of the relief proposed is the injection of employer interests into the trustees' benefit-setting process in order to keep benefits at manageable levels.

Congress could also impose specific criteria, including the financial viability of the employer, to be considered by the trustees pursuant to their benefit-setting capacities. These standards would narrow the virtually limitless discretion of the trustees and make them accountable for their actions. In addition, with specific standards to which trustees would need to adhere, broader judicial review of trustee actions would be possible. Employers not satisfied with trustee decisions could then obtain genuine and satisfactory judicial review in the federal courts.

Once again, the exact nature of relief in this area is left to legislative initiative. However, the DLCA again urges this Subcommittee and the entire Congress of the United States to implement legislation which will prevent trustees from unfairly setting benefit levels far in excess of what employers' contributory obligations would dictate and to provide employers with a legitimate means of challenge when they question pension plan trustee actions.

CONCLUSION

The Amendments Act's withdrawal liability provisions place an undue burden upon employers contributing to multiemployer pension plans. The MPPAA, which seeks to preserve and enforce the status quo, clashes with the Motor Carrier Act of 1980 which promotes innovation and new approaches to changing economic circumstances. The Amendments Act essentially imposes a penalty on businesses contributing to multiemployer plans which attempt to implement various available options in response to economic necessity.

Withdrawal liability assessments are often staggeringly high due to the trustees' establishment of benefit levels far in excess of the employers' negotiated contributory obligations. Thus, the MPPAA has led to financially crippling liability assessments beyond the net worth of the companies involved. It has imposed on the employer a forfeiture of property without compensation, regard to his interests, or a fair and impartial opportunity to be heard.

In fact, the MPPAA could ultimately cause severe harm to multiemployer pension plans. Withdrawal liability assessments which financially devastate participating employers will leave multiemployer plans with unsound financial bases. Moreover, employers have a continuing overwhelming incentive to refrain from joining multiemployer plans. Contributions from new participants will eventually cease, and this could be destructive to multiemployer plans in general.

The results will be harmful to all parties involved. Employers will lose substantial portions of their net worth. Employees will lose benefits from bankrupt pension plans. The labor benefit system will lose money and credibility. In this situation, nobody really gains.

The DLCA strongly supports S. 1748 as a step toward needed change. The bill would help DLCA members and other employers by exempting from the MPPAA's withdrawal liability provisions those plans pursuant to which employers negotiated contribution levels only .

The DLCA also supports the enactment of additional or alternative legislative relief. First, the DLCA suggests a change in the trucking industry exemption in order to increase the scope of its applicability to conform with the realities of the industry. The DLCA also supports Congressional constraints upon the freedom of benefit plan trustees to set pension levels at their discretion without any consideration of the interests of the employer.

The current flood of litigation concerning withdrawal liability strongly suggests the need for change in this area. The DLCA urges Congress to enact the necessary legislation to provide consistent, universal relief from the problems herein described.



PUGET SOUND
FREIGHT LINES - TRUCK LINES

P. O. BOX 24526 • SEATTLE, WASHINGTON 98124 • PHONE 206/623-1600

March 16, 1982

THOMAS E. LOVEJOY
Chief Executive Officer
and President

The Honorable Don Nickles, Chairman
Labor Subcommittee
Senate Labor And Human Resources Committee
Room 4320 D.S.O.B.: Dirksen Building
1st and C Streets, N.E.
Washington, D.C. 20515

Subject: Testimony Regarding The Combined Impact of MPPAA and
Trucking Deregulation on Motor Carriers

Dear Senator Nickles:

On August 14th, 1981, I presented the attached testimony at a hearing on "The Effects Which Erisa and MPPAA Have Had On Small Business". The hearing was held by the Subcommittee on Productivity and Competition of the Senate Committee on Small Business. The hearing was held in Seattle and was chaired by Senator Slade Gorton. My statement was presented on behalf of the Washington Trucking Association and relates to the combined impact of MPPAA and trucking deregulation on the trucking industry.

I was unable to attend hearings on S1748 and the Multiemployer Pension Plan Amendments Act scheduled for March 11th and 17th, but submit this letter and the attached testimony in the hopes that they may become part of the hearing record.

Senate Bill 1748 properly resolves the extremely unfair and confiscatory withdrawal liability problem that MPPAA created for employers who have only agreed to make fixed contributions to multiemployer pension trusts.

The basic unfairness of MPPAA is that it holds employers accountable and financially responsible for unfunded benefit liabilities that have been developed by and within pension trust funds completely beyond the ability of employers to control. These onerous and pervasive withdrawal liabilities cast a dark shadow over a company's ability to conduct normal business, and may block a company's ability to make adaptations necessary for survival.

TERMINALS:

BELLINGHAM
LA CONNER
EVERETT
SEATTLE
TACOMA
OLYMPIA
ABERDEEN
LONGVIEW
PORTLAND

GENERAL OFFICES: 3720 AIRPORT WAY SOUTH • SEATTLE, WASHINGTON 98134

March 16, 1982

The Honorable Don Nickles
Page Two

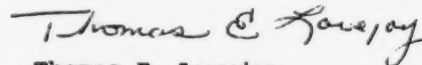
These unfunded benefit liabilities are basically the difference between a pension trust's present and projected assets and its present and projected benefit liabilities. Many pension trusts have no unfunded liabilities. Some have sizeable unfunded benefit liabilities.

Pension funds that have received fixed contributions from employers, but now have unfunded benefit liabilities, pose a particular problem. Basically they have overspent their resources. Whatever the cause of unfunded benefit liabilities, multiemployer fixed contribution pension trusts have not incurred them as a result of the action of employers. Employers agreeing to make fixed contributions to these multiemployer trusts have lived up to their obligations once those fixed contributions have been made.

Reasons that a fixed contribution pension trust might develop unfunded benefit liabilities might include one or more of the following factors: (1) poor return on invested assets; (2) incorrect actuarial assumptions; (3) overly generous benefit levels; (4) excessive administration costs; (5) improper granting of past service credits; (6) misuse of pension funds as a union organizing tool; (7) mismanagement of fund's assets; (8) inattention by administrators or trustees; or (9) criminal misuse of pension trust funds; to name a few.

Under no circumstance is the employer responsible for the unfunded benefit liability of a fixed contribution pension fund. In spite of these simple facts, MPPAA holds employers responsible for their pro rata share of the unfunded benefit liabilities of fixed employer contribution trusts. Senate Bill 1748 corrects this extremely unfair situation. I urge that every effort be made to assure that Senate Bill 1748 becomes law.

Respectfully,
PUGET SOUND FREIGHT LINES, INC



Thomas E. Lovejoy
President and C.E.O.

TEL/nb

Encl.

STATEMENT OF THOMAS E. LOVEJOY

Mr. Chairman and members of the Subcommittee:

My name is Thomas E. Lovejoy. I am Chief Executive Officer of Puget Sound Freight Lines, Inc., a corporation with trucking operations in Washington and Oregon. I am a recent past President of the Washington Trucking Associations, Inc., and represent the Washington State Trucking Association nationally as State Vice President to the American Trucking Associations, Inc. The testimony I am presenting today is on behalf of the Washington Trucking Associations, Inc., and is about the combined adverse effects of the Multi-Employer Pension Plan Amendments Act of 1980, MEPPAA, (PL-96-364) and the Motor Carrier Reform Act of 1980, Trucking Deregulation, (PL-96-296) on Small Businesses in the Motor Carrier Industry.

Mr. Chairman, I feel that it is very appropriate for the Select Committee on Small Business to concern itself with the severe problems caused by trucking deregulation and the Multi-Employer Pension Plan Amendments Act of 1980. I appreciate the opportunity to present written testimony and information on the subject for the record. The trucking industry sincerely appreciates the interest this committee has displayed concerning this grave matter.

Impending disaster was created for the 20,000 plus small businesses in the motor carrier industry by the 96th Congress. In a period of less than three months, two highly technical and complex acts, which on the surface were totally unrelated, were passed and signed into law. Each act by itself was

intended to be an elixer which would solve a multitude of problems.

The Motor Carrier Reform Act of 1980 became law July 1, 1980 and was supposedly intended to unfetter an over-regulated trucking industry to allow improved competition and efficiency. The Multi-Employer Pension Plan Amendments Act of 1980 became law on September 26, 1980, retroactive to April 29, 1980, and was, apparently intended to protect the interest of some 2000 multi-employer pension plans and their participants.

Just as two wonder drugs, if mixed, may result in deadly side effects, the combination of these two well intentioned laws on the trucking industry represents a ticking time bomb that will contribute to the ultimate destruction of most small businesses that were participants in the motor carrier industry prior to trucking deregulation. Hundreds of trucking companies have already met their demise. Additional thousands of small trucking companies are approaching or are at the brink of disaster and will be forced out of business in the near future.

An excellent article that depicts the direction that the trucking industry is headed appeared in the August 3rd, 1981 issue of U. S. News and World Report¹. I have included for the hearing record, a copy of that article. The article is titled "Why the Teamsters Union is Running Scared". In my opinion, it could just as appropriately have been titled

1 See exhibit 1.

"Why 20,000 Plus Formerly Regulated Trucking Companies Are Headed for Trouble". Regardless of the title, in two pages, the article covers alot of territory and paints a picture of where the trucking industry is, where it is going, and why. It is certainly worth reading. Regarding the Teamsters Union, the article states that its "overall membership today is nearly 400,000 less than in 1979, and the biggest attrition has occurred in trucking". Regarding the future of small trucking companies, the article states, "Some economists are predicting ... an annual mortality rate among smaller companies of 25 to 33 percent."

I have also enclosed for the record, testimony presented by the Teamsters Union at the Senate Oversight Hearings on Trucking Deregulation held in Washington, D.C. on June 19, 1981². According to that testimony, out of an estimated 500,000 teamsters employed in 1980 by the trucking industry, roughly 104,000 were on layoff as of April, 1981. Most of these layoffs are directly attributable to the impact of the first nine months of trucking deregulation. Industry consensus is that those Teamster jobs are lost for good and that the loss of as many as 100,000 additional Teamster jobs is possible in the trucking industry each year for the next two to three years.

The merits or demerits of trucking deregulation are not at issue here nor at issue are the pros and cons of the Multi-Employer Pension Plan Amendments Act of 1980. In each case,

2 See Exhibit 2.

Congress has, for better or for worse, cast its vote. Only the passage of time will decide the wisdom of the course Congress has chosen.

What is at issue is that each law is complex and that the interrelationship of the two laws and possible adverse "side effects" were not capable of being studied prior to their enactment, but now can be.

Most trucking business are at this moment struggling along, completely unaware of the ominous obligations that MEPPAA has placed upon them almost co-incidental with the timing of trucking deregulation. Sadly, though MEPPAA became law September 26, 1980, it has received little publicity. Most trucking company managers are still not aware of MEPPAA's existence, much less the devastating liabilities that may unexpectedly be triggered. Only since late June, 1981, a few weeks ago, have articles about MEPPAA started appearing in trade literature. Awareness of the significance of MEPPAA is just beginning.

Enclosed for the record are copies of three articles written about MEPPAA that are just starting to draw some industry attention. The first is an article that appeared in the June 22, 1981 issue of Transport Topics, American Trucking Associations' national newspaper of the trucking industry. The Transport Topics article carried the wordy headline "Multi-Employer Pension Plan Amendment Act Created Pitfall for Carriers"³. Appearing nearly nine months after

3 See Exhibit 3.

enactment of MEPPAA, this article was the initial alert to thousands of carriers about the problems it created for trucking businesses. It is worth reading.

Second, the July, 1981 issue of the Washington (State) Trucking Associations' monthly bulletin carried its first article on MEPPAA with the snappy title, "Employer Withdrawal Liability under Multi-Employer Plans"⁴. It attempts to alert Washington State Trucking Association members about the existence of MEPPAA and suggests that MEPPAA is a law that industry participants simply must learn more about as a matter of survival. Thus, awareness of MEPPAA in Washington State is also just beginning.

Third, is an article that appeared in the July 20, 1981 issue of Business Insurance, a weekly insurance newsmagazine. The article is titled, "Truck Firm Challenges Multi-Employer Plan"⁵. In my opinion, it is a horror story. It tells about Johnson Motor Lines, Inc., a North Carolina trucking company that went out of business and closed its doors during the 151 days of 1980 that was prior to enactment of the law on September 26, 1980 but during the retroactive period that MEPPAA created going back to April 28, 1980. On June 23, 1981, according to the article, Johnson Motor Lines, Inc. received a withdrawal liability claim for \$ 16,658,936.34 from the Teamsters' Central States Pension Fund, a sum 2.2 times greater than the combined net worth of the trucking company and its parent. This liability is due solely as a result of MEPPAA.

4 See Exhibit 4.

5 See Exhibit 5.

Some real dilemmas are posed to the trucking industry by the untimely combination of trucking deregulation and MEPPAA. First, trucking deregulation casts the industry into a rapidly changing new environment where the ability to change, adapt and innovate are necessary to survive. MEPPAA, on the other hand, establishes severe obstacles and liabilities which make these necessary changes, adaptations and innovations impossible.

Second, forty-five years of government imposed regulation of the trucking industry set the industry up as an easy target for extensive unionization. The Teamsters Union took advantage of the near captive status of the trucking business and grew to be one of the most powerful labor unions on earth. Deregulation has opened the doors for new competitors in the trucking business and most of them are non-union. MEPPAA locks in the thousands of small carriers that had little choice but to deal with the Teamsters Union during trucking regulation. It leaves them with little opportunity for survival.

Many companies cannot compete if forced to stay in the Union pension plans; and they face liabilities established by MEPPAA that possibly exceed their net worths if they are forced to get out. This is true whether companies are forced out by competition, lack of business, bankruptcy or even by the act of decertification of the Union by employees. The option of voluntarily closing the doors, without severe, even confiscatory liabilities being imposed is also gone.

The Johnson Motor Lines example clearly demonstrates that.

Third, the trucking industry has for many years supported pension plans designed to provide for the well being and security of industry employees. However, in negotiations with the Teamster Union, participants of trucking industry bargaining have historically only been able to negotiate hourly pension contribution rates with the Union, without the opportunity to negotiate benefits. Most trucking companies, because of the patterns established by national bargaining and the overwhelming strength of the Teamsters Union, had no opportunity to even bargain pension contribution rates, but had to accept the pension contribution rates demanded by the Union.

Most trucking businesses have had no opportunity to have any say whatsoever on the levels of pension benefits paid by the Teamster pension plans. Regardless of these circumstances, MEPPAA holds the individual company totally accountable for the plans' unfunded vested benefit liabilities, rather than the Unions that dictated benefit levels.

In sum, the 96th Congress did a great deal to severely impact the future of tens of thousands of small trucking businesses across our land. Deregulation dealt a reeling blow to many trucking companies and MEPPAA restricts their ability to react appropriately for survival. Perhaps it would be more appropriate to look at the relationship between the two laws by viewing trucking deregulation as a death

warrant for many trucking companies and MEPPAA as a confiscatory death tax.

I have a feeling that although my comments today relate to problems created by MEPPAA and deregulation of the trucking industry, serious problems with MEPPAA also exist in other industries and small businesses as well. I would suggest that MEPPAA would cause tremendous difficulty with any industry facing a declining or cyclical employment.

Mr. Chairman, I sincerely agree with the many people who look upon the trucking industry's "Catch 22" situation relative to deregulation and MEPPAA and exclaim "It isn't fair!". I am certain that most reasonable people, after looking into the matter, would agree that it is not fair! Since the real problems I have attempted to explain and draw attention to have been created by Congress, it is likely that the attention of Congress will be necessary to remedy them.

I suggest that there are other hardships created for trucking and other small businesses by MEPPAA that can best be brought out by conducting special hearings on the "Impact of the Multi-Employer Pension Plan Amendments Act of 1980 on Small Business". I suggest that the Select Committee on Small Business would be the most appropriate committee to conduct such special hearings.

Mr. Chairman, thank you for your kind attention. I will try to answer any questions that you have.

Labor

Why Teamsters Union Is Running Scared

Stunned by effects of fierce truck competition and a poor economy, the union's power to call the shots on wages is now in question.

Turmoil in trucking is cutting deeply into the ranks of the Teamsters Union and threatens to spawn new labor troubles in one of this country's biggest industries.

More than 100,000 Teamsters have lost their jobs in the past year or so as hard-pressed trucking firms, struggling to adapt to government deregulation and economic hardships, trim payrolls or drop out of business altogether.

New jobs are opening up, but many are with nonunion companies that have not been squeezed as hard by heightened competition and high Teamster wages. As a result, the 1.9-million-member union is in danger of losing its once powerful grip on the nation's truck lines.

"It's been disastrous," says the president of one Teamsters local. "We're losing ground, and there's no way we're ever going to get it all back."

The union's misfortunes may come to a head next January when negotiations are to start for a new National Master Freight Agreement—historically the keystone of labor contracts in the trucking industry.

"Troubling" times. The Teamsters are sure to use the negotiations to reassert the union's waning influence over the trucking business. But unionized companies, some of them battling for survival, will fight for big concessions. "It could be a very troubling situation," says David Moister, a business professor at Harvard University and an authority on the industry.

Although the union in recent years has organized successfully in other industries, its overall membership today is nearly 400,000 less than in 1979, and the biggest chunk of that attrition has occurred in trucking. About 300,000 members are now covered by the National Master Freight Agreement—down 25 percent from 10 years ago.

The union is not sitting still. Teamster leaders plan to pump an extra 13 million dollars each year into organizing activities. Airlines, government and health-care workers will be the key targets of the push.



The Teamsters' new president, Roy L. Williams, convinced that deregulation is the union's biggest threat, has vowed to fight "with every ounce of energy in my body" to halt further erosion of government rules that have protected the industry and the union in the past.

Without doubt, the trucking business is in upheaval. For 45 years, truckers operated under strict rules, monitored by the Interstate Commerce Commission, that gave them almost monopolistic control over access to shipping routes and kept rates—and wages—uniformly high.

Everything changed a year ago when Congress, bucking heavy opposition from both the Teamsters and trucking groups, enacted the Motor Carrier Act of 1980. Among other things, the law made it easier for new trucking companies to go into business and to enter previously restricted markets. It also permitted price competition.

Under the old system, operators had to obtain ICC certification—a costly and difficult procedure—to do business on any route. Because these certificates gave companies a virtual monopoly on over-the-road deliveries, they often used them as collateral on loans to cover equipment purchases and operating expenses.

Now, the ICC may issue operating permits to virtually anyone who wants to get into the trucking business.

Rate setting had been accomplished



Out of a job in Milwaukee, Teamster Jim Staggs, left, is willing to work for a non-union trucker. The leader of his Teamster local, James Jesinski, above, wouldn't blame him.

largely by regional groups of truckers who set rates collectively and were exempted from antitrust

laws. The new law will end that system by 1984, when each company will be required to set its own rates. Meanwhile, firms may raise or lower rates by as much as 10 percent per year without prior ICC approval.

A new face. Deregulation has jolted the trucking business as much as it has the Teamsters. In the last 12 months, nearly 3,000 new carriers have applied to the ICC for operating authority. During the same period, the commission has granted more than 36,000 requests to operate along new routes. That has enabled some companies to expand their operations into areas that were previously off limits, and much of that expansion has come from non-union firms.

Competition already is driving down rates. Some companies now offer discounts to high-volume shippers or those who bring their shipments to the truck terminal. One big non-Teamster firm, Overnite Transportation, recently lowered rates by 10 percent, plus another 5 percent discount if pickups are not required. Overnite's action was quickly matched by 50 other major carriers.

The shake-up over routes and rates has driven many companies out of business—416 since the law was enacted—and thrown their unionized employees out of work. Losers included such major operators as Johnson Motor Lines, based in Charlotte, N.C., and Wilson Freight Company, a Cincinnati

Microfilmed From
Best Available Copy

firm, which employed 3,400 people at the time it folded. Many others, say industry officials, are on the ropes.

"A lot of good, established carriers are going by the wayside," says Ronald Lindner, vice president of Advance Transportation in Milwaukee, one area hard hit by layoffs in trucking. "There's going to be a real shakeout."

Some economists are predicting that bankruptcies and mergers will leave seven or eight major interstate trucking firms and an annual mortality rate among smaller companies of 25 to 33 percent.

Widening circle. Industry and union officials concede that not all of the trucking industry's woes are the fault of deregulation. Troubles in such related industries as autos, construction and steel have meant less business for truckers.

"Traffic is down—there's no question of that," says Edward Kylie, senior vice president of the American Trucking Associations. "It's happened before when we've had recessions."

Still, note some experts, the industry's present difficulties are exacerbated by fierce price competition that did not exist in past recessions. The impact is certain to be damaging, for the industry and for the union. "The Teamsters stack up as the big losers in deregulation," says Harvard's Maister.

The damage already is evident for Teamsters Union members hurt by these changes.

"Thousands of our union members who have spent their lives providing transportation services have lost their jobs," says R. V. Durham, president of Teamsters Local 391 in Greensboro,



Teamsters President Williams: Putting millions into organizing new members.

N.C. Many idled Teamsters have taken jobs outside of trucking or are driving for nonunion employers.

Others, like Jim Staggs of Milwaukee, are unable to find steady work. A truck-driver and dockworker for 18 years, the 37-year-old Staggs was laid off in March, 1980, from his job with Yellow Freight. Since then, he has worked part time as a security guard and done roofing and painting jobs to support his wife and two daughters. Occasionally, he is called in for a day or two of driving or loading trucks.

Although he still considers himself a trucker and a Teamster, Staggs holds little hope of getting his job back. "If something good comes along, I suppose I'd have to take it," he says, even if it means driving nonunion.

Union officials seem sympathetic to

the plight of laid-off members such as Staggs. "Our attitude is, if a person can find a job in a nonunion company, he should take it," says James Jesinski, secretary-treasurer of Teamsters Local 200 in Milwaukee. "Who knows, it may give us a chance to organize that company."

But it will be difficult to convince nonunion drivers that they will be better off, in the long run, if they vote to be represented by the Teamsters. Firms that are locked into Teamsters contracts are less able to reduce labor costs to help absorb the pressures of rate competition.

"The nonunion companies can cut rates and still stay in a marginal situation," concedes Durham of the Teamsters. Observes one industry official: "The way things are now, voting for the union could mean voting yourself out of a job."

The union already is hinting that it may go easy in its wage demands during negotiations of the next master freight agreement. "There's no point in pushing them clear out of business," says Jackie Presser, a union vice president from Cleveland. But Presser says "job stability" will be a key union concern. On that they may provoke a fight.

Markets in flux. "Job-protective rules are just what the employers don't need right now," says Maister of Harvard. He points out that the companies will need added flexibility to adjust their work force as markets change. "Things could get very turbulent indeed," he says.

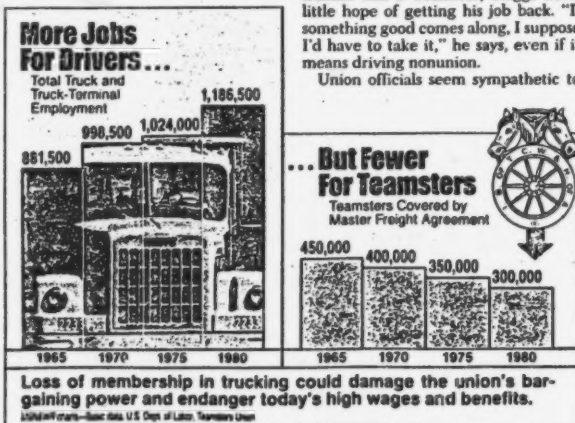
As matters now stand, the employers could be in the driver's seat at the negotiating table. As more and more truckdriving jobs go to nonunion workers, the Teamsters Union may become less able to back up the demands it makes by shutting down the trucking industry.

In the past, the mere threat of a nationwide strike involving hundreds of thousands of truckdrivers sent shivers through practically every motor-freight customer.

Some experts even predict the demise of national bargaining in trucking—a further dilution of the union's influence. Now that employers are going their separate ways in setting rates, there is less incentive for them to sign uniform contracts for wages and working conditions.

To all such speculation, however, the union puts up a bold front. Vows Vice President Presser of the Teamsters: "We put up 10,000 pickets on the highways, trucking will stop—don't worry about it."

By JEFFERY L. SHELTER



Microfilmed From
Best Available Copy

LAYOFFS IN THE GENERAL FREIGHT MOTOR CARRIER
INDUSTRY & TRUCKING INDUSTRY

April, 1981

REPORT OF SURVEY OF 32 REPRESENTATIVE LOCAL UNIONS
NATIONAL MASTER FREIGHT AGREEMENT & CHICAGO
TRUCKING AGREEMENTS

Prepared by:

Norman A. Weintraub,
Chief Economist, IBT
June 8, 1981

REPORT OF SURVEY OF 32 REPRESENTATIVE LOCAL UNIONS
NATIONAL MASTER FREIGHT AGREEMENT & CHICAGO
TRUCKING AGREEMENTS
LAYOFF & EMPLOYMENT

Introduction:

In May, 1981 the International Brotherhood of Teamsters distributed survey forms to thirty-two affiliated local unions with significant membership covered by the National Master Freight Agreement and Supplemental Agreements or the Chicago Trucking Agreements. The selected local unions were requested to report for April, 1981 for the key job classifications of over-the-road driver, pickup and delivery driver and terminal worker (dock, hostler, etc.) the following information:

- 1) number of workers on the seniority list.
- 2) number of workers employed.
- 3) number of workers on layoff.

A separate survey form was to be completed by each local union for each Interstate Commerce Commission regulated motor carrier in its jurisdiction under the National Master Freight Agreement. Workers maintain seniority for three (3) years on layoff. The layoff rate was computed by the International Brotherhood of Teamsters' Economics Department. The job classifications of maintenance workers and office employees were excluded from the survey since the International Brotherhood of Teamsters only represents a portion of these employees in the general freight industry under the National Master Freight Agreement or Supplemental Agreements. In some areas of the country, maintenance and office

employees are covered by independent International Brotherhood of Teamsters' agreements or are represented by other international unions.

We excluded from this report the employment status of owner-driver employees covered under the National Master Freight Agreement. A later report will present this data. We did not survey the employment status of drivers and owner-drivers working under the Iron and Steel and Special Commodity Riders to the National Master Freight Agreement as the employment distribution requires a different set of affiliated local unions.

The thirty-two unions chosen for this study were selected on the basis of size and geographical location. In some localities a local union may only represent one or two of the three key job classifications. The attachment to this report shows the location of each local union and the employment jurisdiction. The thirty-two local unions are representative of the more than two hundred affiliated local unions with membership covered by the National Master Freight Agreement and Chicago Trucking Agreements.

B. Summary of Results

In April, 1981 there were 88,076 drivers and dock workers on the seniority lists of the 32 reporting local unions of which 19,578 or 22.23% were on layoff. Seniority is maintained for three years on lay-off.

By Area Conference the following layoff rates were computed:

Central:	25.07%
Eastern:	19.78%
Southern:	23.48%
Western:	15.39%

EXHIBIT 2 Page 4

Of the 32 affiliated local unions, 18 or 56.3% had a layoff rate of 20.00% or higher. 5 of the local unions had layoff rates of 30.00% or greater. Only 7 of the 32 local unions or 21.9% reported a layoff rate of less than 15.00% of the seniority list.

By treating all 32 local unions as having equal weight (i.e. ignoring the difference in the numbers on the seniority list) we compute a sample means of 20.86% and a sample standard deviation of 7.480%.

Statistical inference (t-test) with a sample size of 32, allows us to estimate with a 95% degree of confidence, that the layoff rate for the entire National Master Freight Agreement and Supplemental Agreements and Chicago Trucking Agreements is between 18.16% and 23.56%.

In 1979, there were about 300,000 drivers and dock personnel employed under the National Master Freight Agreement and Chicago Trucking Agreements. At the present time, we are 95% certain that the layoff rate ranges between 18.16% and 23.56%, therefore we estimate that between 54,480 and 70,680 of our members covered by these agreements are on layoff.

If we extend the analysis to the specialized sectors of the motor carrier industry under the International Brotherhood of Teamsters agreements, including automobile transporting, tank, bulk, cement, steel, building materials, etc. where our local union representatives have informed us that the layoff situation is equivalent to the National Master Freight Agreement, we had about 500,000 employed in the "trucking industry" in 1979. The layoff rate estimate of 18.16% to 23.56% yields an estimate of between 90,800 and 117,800 International Brotherhood of Teamsters trucking industry workers on layoff status in April, 1981.

The above analysis excludes United Parcel Service, Inc. where we have

reason to believe that the layoff rate for 80,000 International Brotherhood of Teamsters represented employees is very low.

We believe that the estimate of 54,480 to 70,680 International Brotherhood of Teamsters workers on layoff in the general freight industry and 90,800 to 117,800 workers on layoff in the overall Interstate Commerce Commission regulated trucking industry is conservative.

For example, in our survey we only requested that the local unions report on those motor carriers' that terminated operations on or after July 1, 1980. Several large carriers including Transport Motor Express terminated operations shortly before the Motor Carrier Act of 1980 was enacted on July 1, 1980 in anticipation of the act. Workers previously employed by carriers who terminated operations before July 1, 1980 are not included in this report even though they still maintain seniority under the National Master Freight Agreement.

In addition, we believe that several of the local unions reported layoff and employment for private carriers or other carriers not regulated by the Interstate Commerce Commission. Although the survey forms require a reporting for Interstate Commerce Commission regulated motor carriers under the National Master Freight Agreement and Chicago Trucking Agreements, it was not possible to determine if all carriers were regulated. The layoff percentage for the carriers in question were lower than the layoff percentages for the local unions.

The survey did not allow for carriers that have terminated operations since April, 1981 or the consequences of mergers that were begun shortly before that date.

While time has not allowed for an analysis of the reasons for the layoff rate of over 20%, it is useful to note that the Federal Reserve Index of industrial production for the first three months of 1981, according to Table 2.10 of the Federal Reserve Bulletin of April, 1981, was 151.5 (1967=100) or only .7% below the 152.5 reported for the entire year of 1979. The Economic Research Committee of the Regular Common Carrier Conference in "Quarterly Operating Results of the Motor Common Carriers of General Freight reports:

"A group of 220 motor common carriers of general freight operating throughout the United States carried less freight in 1980 than in any year since 1967."

The tonnage for 1980 was 20% below 1979 for the 220 motor carriers of general freight.

It appears to us that the tonnage has been diverted to private carriage, Class III motor carriers or independent owner-operators. The Interstate Commerce Commission and/or the Department of Transportation does not have data on these vital motor carriers.

Our local union representatives have informed us that very few of the workers on layoff have found other employment.

Multiemployer Pension Plan Amendments Act Created Pitfall for Carrier.

(The following is excerpted from a paper prepared by John E. Curran, Washington, D.C. counsel for Kilpatrick & Cody, Atlanta, and William M. Legg, vice president and senior transportation analyst with Alex. Brown & Sons, Baltimore.)

Business is bad, operating costs are rising, freight rates are falling and the government picked a terrible time to strip away whatever motor carrier regulatory protection the Interstate Commerce Commission has left. But you are going to show those guys in Washington: you will sell the company and realize the value you have created all those years to build up.

Wrong. About the same time Congress kicked the regulatory props out from under the industry, it passed a law called the Multi-Employer Pension Plan Amendments Act that makes most carriers who are parties to the National Master Freight Agreement liable for their "fair" share of all unfunded vested pension liabilities. When you look at your balance sheet and see a positive net worth, you might find a nasty surprise waiting for you on the way to the bank.

In 1974, concerned that employees would be unable to collect retirement benefits that had been promised under employer-sponsored pension plans, Congress passed the Employee Retirement Income Security Act. Perhaps the most revolutionary change was the creation of a federally managed program of pension plan insurance called the Pension Benefit Guaranty Corp.

Run by the Labor Department, PBGC was to be funded by annual premiums from pension plans, the income from PBGC's investment of those premiums, and the assets of plans that had terminated with insufficient assets to pay promised benefits and had been taken over by the corporation.

Because of problems with PBGC obtaining necessary financing to cover plans that went out of business

since passage of ERISA, Congress passed the 1980 Pension Act in order to spread the costs for plan failures over a greater number of firms and plans, rather than placing the burden on a select few.

As a result, employers are now faced with substantially higher PBGC premiums, greatly increased funding standards and the imposition of employer liability in situations where it did not previously exist. Under the new act, in fact, there exists the possibility that the amount of each employer's liability for its employees' benefits can actually exceed the company's net worth.

Before the Pension Act, Teamsters' pension funds were run by union-dominated trustees and were virtually ignored by motor carriers because their contributions were set under contract without any residual liability. As a result, the trustees kept raising benefits without an adequate stream of contributions, creating a huge unfunded liability estimated at more than \$4 billion.

Before the Pension Act was passed this was the union's problem. In trying to find an easy way out of the ERISA mess, Congress placed the monkey on the trucking industry's back. As unfair as it is, that is the law until it is changed.

Faced with the spiraling insurance costs, many employers in multiemployer plans might want simply to stop covering their employees under them. Unfortunately, the new act makes it extremely costly and difficult to do so.

Under ERISA an employer could withdraw from a plan without incurring any liability if it withdrew five years before termination of the plan. If termination of the plan occurred before the five-year period ended, the employer was liable to the plan for up to 30% of the employer's net worth.

If an employer who had contributed 10% or more of the overall contributions to the plan withdrew, that firm had to post security with PBGC equal to its share of the liability if the plan terminated on the day of the com-

pany's withdrawal. This payment would be refunded if the plan did not terminate within the five-year period.

This permitted an employer to withdraw and leave the remaining employers in the plan with the obligation to pay benefits. This encouraged many employers, especially those in declining industries, to withdraw from the plans without incurring liabilities.

Under the new act all withdrawing employers are required to assume responsibility for a share of the liability whether the plan terminates or not, or whether the companies are substantial contributors. An employer is seen as having withdrawn when it permanently ceases all covered operations or permanently ceases to have an obligation to contribute.

This includes cases in which an employer sells all business assets to a third party, but not the stock; undergoes a liquidation; moves business operations to an area not covered by the plan; or "bargains out" of its obligation. The withdrawal liability also applies to employers who "partially" withdraw from the plan.

The partial liability occurs if (1) the number of "contribution base units," such as employee hours worked on which an employer's contribution is based, does not, for each of three consecutive years, exceed 30% of the number of contribution base units for the average of the two highest years in the preceding five-year period resulting in a 70% decline in the contribution base; (2) the employer who contributed under two or more collective bargaining agreements ceases to have an obligation to contribute under one, but not all, of the agreements but continues the same kind of work in the area covered by the agreement; or (3) an employer permanently ceases to have an obligation for work performed in one or more of its covered facilities but continues operations at the uncovered facilities.

Attempting to ameliorate the potentially crippling impact of the net on employers, Congress provided exceptions to the withdrawal liability,

including "long and short haul" trucking companies, and the moving and public warehousing industry.

Under the exceptions, a trucking employer incurs withdrawal liability if PBGC determines that its withdrawal substantially damages the plan's contribution base or it fails to post a bond or escrow equal to 50% of its withdrawal liability as calculated by the plan trustees.

Generally, the bond or escrow would remain in effect for 60 months and would be returned to the employer if no damage to the plan results, or PBGC determines that the employer's withdrawal has not damaged the plan's contribution base.

This exception may provide some relief for smaller employers if they can meet the bond requirements, but it is of little value for larger employers upon which PBGC would impose liabilities because of the substantial nature of their contributions to a plan's base. Also, the exception is limited to those plan members whose industry, trucking for example, makes up at least 85% of the plan's contribution base. In some plans, such as the Western Conference of Teamsters', where motor carriers could never make up 85% of the total contributions, the exception would not be available.

Another limited exception was intended to allow an employer to sell its assets to a third party in a bona-fide arms-length transaction to a firm having no obligation to contribute to the plan.

This occurs if the purchaser continues to make substantially the same plan contributions; the purchaser provides a bond equal to the plan contributions for the prior three years, to be forfeited if it fails to make its mandatory contribution or withdraws within five years; and the seller agrees to remain, secondarily liable for five years.

A closer examination of this exception shows that this relief is illusory. In order to work, the purchaser must assume liabilities that may equal or exceed the seller's or the predecessor's

net worth and must post a surety for its continued participation in the plan. This removes any business flexibility a purchaser might have over a bought for five years and would reduce the value of those assets.

At the same time, the seller, forced to remain liable secondarily for five years, unable to distribute or update the remainder of its assets during that period, and would be subject to the business decisions of an unrelated purchaser. It should be noted that if all of the seller's stock is sold to the purchaser, all of the pension liabilities pass to the purchaser.

Because an employer that had suffered financial difficulties could discover in liquidation that not remained to satisfy PBGC and other creditors, Congress raised PBGC as a general creditor, not after secured creditors.

In a relatively ineffectual effort to deal with the problems of destruction of all residual value, Congress also established certain ceilings on a liquidating employer's total liability. PBGC that are also applicable to all or substantially all of an employer's assets.

Under the act, a liquidating employer is liable for the first 50% of withdrawal liability and can be held liable for the rest up to its net worth.

If an employer sells all or substantially all of its assets to an unrelated third party but doesn't liquidate, there are also ceilings on the potential liability incurred. The employer's share of the unfunded vested benefits cannot exceed the greater of either the unfunded vested benefits attributable to that employer's employees, or the liability as applied under a schedule set forth in the plan for determining the employer's liquidation value.

Under the liquidation schedule, liability ranges from 30% of the employer's liquidation value if that value is less than \$2 million — up to \$4,350,000, plus 80% of the employer's liquidation value in excess of \$10 million if that value exceeds \$10 million.

Microfilmed From Best Available Copy

31

EXHIBIT 3

Amendments Act Created Pitfall for Carriers

Withdrawal. This payment funded if the plan did not within the five-year period notified an employer to and leave the remaining in the plan with the oblig- benefits. This encouraged loyers, especially those in industries, to withdraw plans without incurring li-

the new act all withdrawing are required to assume re- for a share of the liability e plan terminates or not, the companies are sub- tributors. An employer is iving withdrawn when it y ceases all covered opera- rmanently ceases to have n to contribute

ides cases in which an em- all business assets to a but not the stock; under- dation; moves business to an area not covered by "bargains out" of its obli- withdrawal liability also mployers who "partially" m the plan.

d liability occurs if (1) the "contribution base units," ployee hours worked on mployer's contribution is not, for each of three years, exceed 30% of the contribution base units for of the two highest years ding five-year period re- 70% decline in the con- e; (2) the employer who under two or more collec- ing agreements ceases to bligation to contribute out not all, of the agree- continues the same kind of rea covered by the agree- an employer permanent- have an obligation for ned in one or more of its ties but continues opera- ncovered facilities.

This occurs if the purchas- continues to make substantially the same plan contributions; the purchaser p- ovides a bond equal to the plan con- tributions for the prior three years, to be forfeited if it fails to make its man- datory contribution or withdraws within five years; and the seller agrees to remain, secondarily liable for five years.

A closer examination of this excep- tion shows that this relief is illusory. In order to work, the purchaser must assume liabilities that may equal or exceed the seller's net worth.

including "long and short haul" trucking companies, and the moving and public warehousing industry.

Under the exceptions, a trucking employer incurs withdrawal liability if PBGC determines that its withdrawal substantially damages the plan's contribution base or it fails to post a bond or escrow equal to 50% of its withdrawal liability as calculated by the plan trustees.

Generally, the bond or escrow would remain in effect for 60 months and would be returned to the employer if no damage to the plan results, or PBGC determines that the employer's withdrawal has not damaged the plan's contribution base.

This exception may provide some relief for smaller employers if they can meet the bond requirements, but it is of little value for larger employers upon which PBGC would impose liabilities because of the substantial nature of their contributions to a plan's base. Also, the exception is limited to those plan members whose industry, trucking for example, makes up at least 85% of the plan's contribution base. In some plans, such as the Western Conference of Teamsters', where motor carriers could never make up 85% of the total contributions, the exception would not be available.

Another limited exception was intended to allow an employer to sell its assets to a third party in a bona-fide arms-length transaction to a firm having no obligation to contribute to the plan.

This occurs if the purchas- continues to make substantially the same plan contributions; the purchaser p- ovides a bond equal to the plan con- tributions for the prior three years, to be forfeited if it fails to make its man- datory contribution or withdraws within five years; and the seller agrees to remain, secondarily liable for five years.

A closer examination of this excep- tion shows that this relief is illusory. In order to work, the purchaser must assume liabilities that may equal or exceed the seller's net worth.

540
OVER →

net worth and must post a surety for its continued participation in the plan. This removes any business flexibility a purchaser might have over assets bought for five years and would reduce the value of those assets.

At the same time, the seller is forced to remain liable secondarily for five years, unable to distribute or liquidate the remainder of its assets during that period, and would be subject to the business decisions of an unrelated purchaser. It should be noted that if all of the seller's stock is sold to the purchaser, all of the pension plan liabilities pass to the purchaser.

Because an employer that had been suffering financial difficulties could discover in liquidation that nothing remained to satisfy PBGC and its other creditors, Congress ranked PBGC as a general creditor, coming after secured creditors.

In a relatively ineffectual effort to deal with the problems of destroying all residual value, Congress also established certain ceilings on a liquidating employer's total liability to PBGC that are also applicable to sale of all or substantially all of an employer's assets.

Under the act, a liquidating employer is liable for the first 50% of its withdrawal liability and can be held liable for the rest up to its net worth.

If an employer sells all or substantially all of its assets to an unrelated third party but doesn't liquidate, there are also ceilings on the potential liability incurred. The employer's share of the unfunded vested benefits cannot exceed the greater of either the unfunded vested benefits attributable to that employer's employees, or the liability as applied under a schedule set forth in the act for determining the employer's liquidation value.

Under the liquidation schedule, the liability ranges from 30% of the employer's liquidation value if that value is less than \$2 million — up to \$4,350,000, plus 80% of the employer's liquidation value in excess of \$10 million, if that value exceeds \$10 million.

Although this appears to place a ceiling on potential liability, it must be recognized that the liability is imposed only on the amount of the plan's unfunded vested benefits that may be attributable to the employer. The employer also will have to absorb part of the plan's unattributable and uncollectible benefit costs, which are not subject to the ceilings.

It also should be remembered that in case of a withdrawal resulting from "bargaining out," moving, or dropping the plan, a company's full liability becomes due.

Following a withdrawal or partial withdrawal from a pension plan, the plan's sponsors are required to notify the employer of the amount of its liability and the payment schedule. The employer has 90 days to challenge the determination and must begin payments on its liability no later than 60 days following notification by the plan's trustees.

An employer is considered in default if it fails to meet the payment schedule and the plan may immediately accelerate the balance due on the liability, plus accrued interest. In case of defaults, anyone adversely affected may file a civil suit to recover delinquent liability. The court must award all or part of the costs plus reasonable attorneys' fees, unpaid contributions plus interest, and an amount equal to the greater of interest on unpaid contributions or liquidated damages provided for under the act, not to exceed 20% of the amount of delinquent contributions.

In an effort to better insure pension benefits, the act also requires that the annual per participant premiums be increased fivefold over the next nine years. It also requires dramatic increases in the funding of benefits for employees in financially unstable multi-employer plans, costs that ultimately will be borne by employers.

In attempting to prevent employers from running away from their obligations by withdrawing from pension plans, the new act will most likely have a chilling effect on the ability of businesses to enter into normal, everyday business transactions.

An employer that wishes to move his operations from Baltimore to Dallas may well find it is incurring a significant withdrawal liability as a result. An employer that proposes to

"bargain out" of a multi-employer plan and provide comparable and less expensive retirement benefits for its employees through its own plan will find the same thing.

In addition, an employer that wants to sell his business assets to a third party, or who is forced to liquidate because of business setbacks, may find that the cost of withdrawal liability leaves little or no value left in the business.

The only real answer is to seek legislative relief while the ink on the new Pension Act is still wet.

business insurance, July 20, 1981 /

Truck firm challenges multiemployer plan law

By JERRY GEISEL

CHICAGO—A North Carolina trucking company is challenging a new landmark federal law that gives multiemployer pension plans the power to collect hefty payments from employers who leave the plans.

Republic Industries of Kansas City, Mo., and its trucking subsidiary are fighting in federal court a multiemployer plan that wants more than double Republic's net worth.

The Central States, Southeast and Southwest Areas Teamsters' pension fund is claiming a Republic subsidiary owes it \$16.5 million to cover unfunded pension liabilities.

Republic's subsidiary, Johnson Motor Lines Inc. of Charlotte, N.C., was a member of the plan until the company closed last summer. Johnson also had been a member of several smaller multiemployer pension plans that will seek withdrawal liability payments, too.

Republic and Johnson are suing the Teamsters plan to block it from collecting the payments due it under the Multiemployer Pension Plan Amendments Act of 1980. The companies claim the law is unconstitutional and have hired Philip B. Kurland of Chicago, one of the nation's top constitutional law experts, to argue the

the court issues an injunction blocking Central States from collecting withdrawal liability payments from Johnson and Republic, it could trigger a wave of litigation as employers look for an escape from the

new act.

That law poses massive new pension liabilities, which lawyers and consultants have warned could lead to the kind of enormous claim now pending against Republic and Johnson (*BI*, Dec. 1, 1980).

"Lawsuits will be filed as employers are faced with demands for withdrawal liabilities," said Peter Turza, a former Senate aide specializing in pension law and an attorney with Gibson, Dunn and Crutcher in Washington. "Big bucks are on the line."

If those suits are successful, the ability of the nation's 2,000 multiemployer pension plans to collect withdrawal liability payments could be hampered, threatening the financial stability of the still shaky pension plans.

It was only last year that Congress closed a loophole that pension experts thought would lead to a collapse of multiemployer pension plans.

Under the original Employee Retirement Income Security Act, an employer who withdrew from a multiemployer plan could escape paying for the plan's unfunded vested liabilities if the entire plan did not fold within five years of the employer's withdrawal.

In the Multiemployer Amendments Act, Congress said an employer who left the plan would be required to pay a share of the plan's unfunded vested pension liabilities to be determined by plan trustees.

Because employers' contributions often failed to meet the benefits promised, many of the plans are

badly underfunded. This means employers who now want to withdraw from a plan face a huge withdrawal liability bill.

But Johnson and Republic say the new law violates the Constitution besides creating a financial nightmare for employers.

Johnson and Republic say the act violates the due process clause of the Constitution because it gives plan trustees the power to determine withdrawal liability but does not give employers the opportunity to directly challenge the decision.

At the same time, the act's retroactivity violates the due process clause that bars Congress from imposing severe liabilities without warning, the suits say.

President Carter signed the bill Sept. 26, 1980, but it applies to all withdrawals after April 28, 1980.

Johnson, which had incurred severe business losses, ended 35 years of operations last August, seven weeks before the bill was signed.

When Johnson closed, the provisions of ERISA were in effect. Under these rules, Johnson's liability would have been limited to a maximum of 30% of its net worth, which was about \$6.8 million.

No Johnson officer was aware of the new amendments until October 1980 when the firm received a letter from the pension fund, detailing its intent to file a withdrawal liability claim against the firm.

On June 23, Johnson received the Central States claim: \$16,658,936.34, payable immediately or in monthly installments of \$280,680.50 starting July 1.

The method used by Central States trustees to calculate Johnson's withdrawal liability, one of four permitted under the statutes, allocates Central States' unfunded vested benefits to Johnson in proportion to Johnson's contributions to the fund compared to all contributions received by the fund.

If Johnson fails to make any monthly withdrawal payment, Central States has the right, after giving Johnson 60-days notice, to require immediate payment of the remaining balance plus interest.

The huge claim puts the firms in an "impossible position," according to an affidavit signed by Robert Riss, Johnson's chairman of the board and chief executive officer of Republic Industries.

"If we refuse to make the payments demanded by Central States, we may immediately become liable for an amount double our net assets. (Republic's net assets are \$7.5 million, including Johnson's net worth of \$6.8 million.) If we did pay, we would immediately be bled of our net assets at such a rate that we would pay, every two months, an amount approaching Republic's total annual 1980 income," Mr. Riss said.

The brief, however, points out another issue besides money.

"If Johnson is relegated to the procedures prescribed by the statutes for the resolution of the withdrawal liability dispute, it will be irreparably deprived of its constitutional rights to trial by jury and to a judicial hearing prior to the taking of its property," according to the brief.

The Johnson brief concedes that an employer can protest the amount of withdrawal liability set by the plan trustees to arbitrators. But its constitutional rights still would be violated because it would be required to make withdrawal liability payments during arbitration hearings, it says.

In addition, compulsory arbitration violates Johnson's right to access to the courts and a jury trial to resolve the withdrawal liability claim, Johnson contends.

When Congress enacted the multiemployer amendments, it deliberately made the law retroactive

to prevent a mass exodus of employees from multiemployer plans while it was hammering out the final provisions of the new law.

But Johnson says Congress didn't have the right to impose liability on an employer for a past act.

Because Johnson didn't know when it closed that it would be hit with a withdrawal liability claim, it didn't have the opportunity to choose between continuing to operate at a loss or potential destruction because of the withdrawal payment, according to the brief.

If the withdrawal liability law had been in effect when Johnson closed, company officials would have tried to keep Johnson going "in the hope of an ultimate turnaround rather than face the prospects of the staggering liability imposed" by the Multiemployer Amendments Act, Mr. Riss said. ■

Microfilmed From
Best Available Copy

THIS W.T.A. BULLETIN ARTICLE "JULY 1981"
WAS AUTHORED BY T.E. LOUEJOY

EXHIBIT 4

EMPLOYER WITHDRAWAL LIABILITY UNDER MULTI-EMPLOYER PLANS

It is very likely that your company makes pension contributions to one or more of the 2000 multi-employer pension plans that are in existence. If so, it is essential to develop an awareness and understanding of the potential liabilities that many employers have under a relatively new and complex Federal Law.

The Multi-Employer Pension Plan Amendments Act of 1980, (MEPPAA), (P.L. 96-364) became law September 26, 1980. MEPPAA amends the Employment Retirement Income Security Act of 1974, (ERISA). MEPPAA provides that an employer who totally or partially withdraws from a multi-employer pension plan after April 23, 1980 is, under most circumstances, liable for and, required to pay a proportional share of the plans unfunded vested benefits.

In many instances, an employer's share of a pension plan's unfunded vested benefits may approach or exceed the employer's net worth. In the case of the Western Conference of Teamsters Pension Trust Fund, it is estimated that the funds unfunded vested liability as of April 23, 1980 was \$1.5 billion. Additionally, it is estimated that, as of that date each employer contributing to the fund had a potential withdrawal liability that approximately equalled the employer's total five year contributions to the pension trust fund for the full calendar years 1975 through 1979. Obviously, this could be a significant amount.

The financial condition, unfunded liability for vested benefits, and employers pro rata share of that liability varies from one multi-employer pension fund to another. Some pension plans are fully funded, while others have withdrawal liabilities exceeding that of the Western Conference of Teamsters Pension Trust.

The new law spells out the circumstances which may trigger an employer's liability and the method for determining how much an employer may owe, methods of payment, and many other details. Most pension trusts have already modified their rules and procedures to comply with the requirements of the new law. Although most employers have received notification, few have had the opportunity to discover the significance or amount of their potential liability, or how to avoid triggering it.

It is beyond the scope of this article to attempt to specifically interpret or explain what triggers an employers complete or partial withdrawal liability.

However, the following general withdrawal definitions may be helpful:

Complete withdrawal from a multi-employer plan occurs generally when an employer permanently ceases to have an obligation to contribute under the plan, or permanently ceases all covered operations under the plan;

Partial withdrawal occurs generally where the employer does not completely withdraw from the plan, but where a specified event occurs which will significantly reduce the employer's obligations for contributions under a plan, i.e. a 70 percent decline in contribution base units.

Although the Multi-Employer Pension Plan Amendments Act of 1980 effects employers in all industries, the impact on the trucking industry combined with the changes precipitated by the Motor Carrier Act of 1980 is cause for special concern. While the Motor Carrier Act has essentially opened the gateways for free entry and unlimited competition within our already highly competitive industry, MEPPAA has almost simultaneously added potential penalties that tend to inhibit and restrict the options of most existing trucking industry participants.

It is very difficult to change a law once it is in existence. The American Trucking Association will attempt to improve the position of the trucking industry through the development of proposed legislation, involvement in appropriate litigation, and through the rulemaking process. Also, the ATA will develop educational and public relations information on the 1980 Act for the benefit of trucking industry executives. As this information becomes available, it will be announced in the Washington Trucking Associations' Bulletin. WTA members are urged to seek legal advice regarding individual employer liabilities under the 1980 Multi-Employer Pension Plan Amendments Act.

Wittmann

JAN 11 1982

January 6, 1982
Our 108th Year

Senate Subcommittee on Labor
c/o Mr. Chuck Carroll
4230 Dirksen Building
Washington, D.C. 20510

Subject: S.1748
Multiemployer Pension Bill

Gentlemen:

We respectfully request to have on record our support for S.1748 which will be considered during February, 1982.

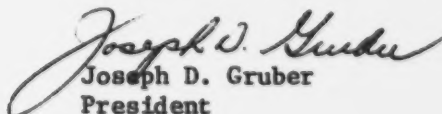
We are taking this opportunity to enclose our written testimony of our experience with the Employee Retirement Security Act of 1974 and the Multiemployer Pension Plan Amendments Act for the Subcommittee's consideration.

If we can offer any further information, please let us know.

Thank you for this opportunity to express our views on this issue.

Sincerely,

THE WITTEMANN COMPANY, INC.


Joseph D. Gruber
President

JDG/dn
Enc.

Wittemann

EXPERIENCE REPORT

SUBJECT: Multiemployer Pension Plan Amendments Act (MPPAA)

DATE: January 6, 1982

PURPOSE: The purpose of this report is to outline our actual experience as we have been affected by the above subject Act which was signed into law on September 26, 1980 and made retroactive to April 29, 1980.

DISCUSSION: The Wittemann Company, Inc., a New York State Corporation in 1979, made a decision to relocate its facilities and eventually change its incorporation from the State of New York to the State of Florida. This decision was arrived at in mid 1979.

Having been affiliated with the International Association of Machinists and Aerospace Workers union, negotiations took place to work out a mutually satisfactory agreement between The Wittemann Company, Inc. and the I.A.M. This agreement was ultimately signed in October, 1979, clearly stating that various positions and benefits would be terminated between that date and July, 1980.

The Wittemann Company, Inc. then proceeded to carry out its plans to construct a new manufacturing facility in the State of Florida and ultimately exercise the agreement with the I.A.M., with the last bargaining unit employee being terminated on July 11, 1980. All commitments, as agreed upon in the termination agreement with the I.A.M., were fulfilled by The Wittemann Company, Inc.

In the following weeks of July, 1980, The Wittemann Company, Inc. relocated its complete office and manufacturing facilities from Buffalo, New York to Palm Coast, Florida where it eventually became incorporated in the State of Florida.

As one can see, our complete withdrawal from the I.A.M. Pension Fund took place before the actual signing of the MPPAA into law on September 26, 1980.

On May 22, 1981, we received notification from the I.A.M. National Pension Fund that due to the retroactivity of the law, The Wittemann Company, Inc. was liable for certain withdrawal obligations as outlined in the law. This liability amounted to \$72,668 including interest adjustments. This is a very sizable amount of money, especially for a relatively small family owned business such as The Wittemann Company, Inc., employing approximately 100 people.

SINCE 1874 *Serving the World's Brewing,
Beverage, Food, and Chemical Industries*

THE WITTEMANN COMPANY, INC.
P.O. BOX 3000 • PALM COAST, FLORIDA 32037 • 304-445-4200 • CABLE WITSNIFE • TELEX 808621

After receipt of this information concerning our liability, The Wittemann Company, Inc., of course, contacted its legal counsel and have gone on record with the I.A.M. Pension Fund that we disagree that this liability is for our account. We have also told them that we wish to take this matter to arbitration. However, the Plan is delaying arbitration until procedures for arbitration, under Section 4221 of the Employee Retirement Income Security Act of 1974, are promulgated by the Pension Benefit Guarantee Corporation.

In the meantime, we have been making quarterly installments to the Pension Fund to offset our liability.

Our collective bargaining agreement, under which the plan contributions were made, fixed only the rate of contribution and not any benefit. The rate, of course, was negotiated at each union contract negotiation date, and only the rate was negotiated, not the benefits.

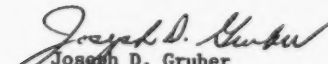
SUMMARY:

Based on the above discussion, The Wittemann Company, Inc. strongly feels that the retroactivity of the law is unconstitutional. We also feel that because of having an agreement signed between our bargaining unit and the company in October, 1979, even with the retroactivity of the law, the withdrawal agreement was signed before that date, making this liability to Wittemann void.

The Wittemann Company, Inc. supports very strongly the legislation which was introduced in the Senate by Senator Orrin Hatch and Senator Dan Quayle to modify the withdrawal liability provision of the MPPAA. We urge the Senate Subcommittee to support and back this legislation for the reasons as stated in the legislation introduced.

RESPECTFULLY SUBMITTED,

THE WITTEMANN COMPANY, INC.


Joseph D. Gruber
President

JDG/dn

North Bergen Piece Dye Works, Inc.

1701-13 Seventy-Fifth Street

North Bergen, New Jersey 07047

(201) 889-7070
(212) 736-7878

(1)

TWX: (710) 992-8903
ANS: NBN DYE NBN

February 23, 1982

The Honorable Donald Nickles
United States Senate
4230 Dirksen Office Building
Washington, D.C. 20510

RE: S-1748 Hearings

Dear Senator Nickles:

Please accept this letter for the ~~record~~ since I simply can not afford the time to attend your hearings on this bill.

I am writing you about a problem which Bill S-1748 addresses. I believe this problem will have catastrophic effects, on Businesses, and in particular on small business, should S-1748 not be enacted.

The root of the problem stems from various Federal Laws and Regulations.

This problem affects those employers involved in a Taft Hartley, Multi-Employer collectively bargained Pension Plan, of which said plan is regulated by ERISA and the Pension Benefit Guarantee Corporation.

Let me summarize the mechanics involved in the problem with the following illustration.

Presently if there are 25 individual employers covered by one union contract with Union "A" in Pension Plan "A". They are responsible for the unfunded liability of Pension Plan "A", and these employers must pay their portion of this liability upon sale or closing of the business. In a bankruptcy, Pension "A" becomes a creditor. Legal interpretation of this concept claims that the liability is effective retroactive for numerous years prior to the time the law was introduced in congress and passed into law.

(Con't)

Furthermore the 25 individual employers are actually helpless to affect the operation of Pension Plan "A" in so far as the paying of benefits. These decisions are made by the Pension "A" Trustees, based upon guidance of Pension Plan "A"'s actuary.

However, the 25 individual employers and not Union "A" are responsible for the unfunded liability.

How a business can be made liable several years backwards is beyond my wildest imagination. How could anyone foresee the possibility of a shrinking industry and the liabilities that go with it, on a backwards basis.

The problem becomes acute when one understands that the union is not only free from Pension Plan "A"'s unfounded monies, but is also free to organize another group of employers in the same industry with a different contract and start Pension Plan "B", this new plan is totally free from the burdensome liabilities of other Pension Plans Union "A" may have.

I have argued with my local union official that this course of action by the union undermines the financial base of Pension Plan "A". The union argues that the employers costs in Pension Plan "A" are so high, they could never organize any employer unless they put them in a different pension plan with lower costs.

The seriousness of the problem becomes magnified when and if one takes into account the number of contributing employers to Pension Plan "A" has been dwindling for many years. Putting still a greater burden on the remaining employers while the union goes about freely starting new pension plans to suit its own goals.

This can only lead in the end to bankruptcies or just plain plant closings because of the high costs of funding Pension Plan "A" with a dwindling base. The final casualty is the very employees the union claims to represent.

An analogy to the problem would be the effect on the Social Security System, if employers were free to choose an alternative or private social security plan for new employees, in lieu of our present national social security system.

(Con't)

The social security system may be in trouble, but the pension plans I am referring to are on the brink of disaster.

The solution lies with one of three remedies.

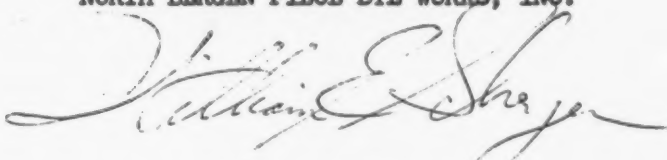
- 1) Enact legislation to prohibit unions from the practice of having multi pension plans for their own interests, and require each union to merge all their present pension plans into one single pension plan, on an industry basis.
- 2) Enact legislation to make unions collectively and jointly, share equally the unfunded liabilities of their pension plans with those employers they have contracts with.
- 3) Exempt employers who in their union contracts, negotiate only contribution amounts to their pension fund, not benefit levels.

The ideal solution would be of course legislation enacting all solutions.

I have specifics if you should require them, I am also willing to talk to anyone you can suggest to help alleviate the problem.

Will you please enact Bill S-1748 to help small business survive, the potentially disastrous affects of Erisa, the way it is presently written.

Very truly yours,
NORTH BERGEN PIECE DYE WORKS, INC.



WES:mr

William E. Scheyer

Merchants-White Line Warehousing, Inc.

1350 Market St., P.O. Box 876

Des Moines, Iowa 50304 • Phone 515/244-2123



March 4, 1982

Ms. Charlene Abshire
Labor Sub Committee
Room 4230
Dirksen Senate Office Building
Washington, D. C. 20510

Dear Ms. Abshire:

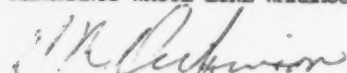
Enclosed is my statement to present to the Sub Committee hearing on
the Amendment to the Multi-Employer Pension.

Senate File 1748

Thank you for the opportunity to present my views on this very critical
matter.

Sincerely,

MERCHANTS-WHITE LINE WAREHOUSING, INC.


D. R. Dickinson
President

DRD/da

CC Senator Orrin Hatch
Senator Dan Quayle
Senator Roger Jepsen
Senator Charles Grassley
Representative Tom Tauke

MEMBER



My name is Darrell Dickinson. I am the owner of Merchants-White Line Warehousing in Des Moines, Iowa. I thank you for this opportunity to direct my comments to this committee in favor of S1748 Multi-Employer Pension Plan Stabilization Act. My company has 28 employees, 12 of which are members of Teamsters Local 147. We are the last remaining dry storage public warehouse in Des Moines covered by a Union contract. Because of the non-union competition it has been virtually impossible to retain our business.

Under normal circumstances we would have the option of selling to another company, or closing our doors, or negotiating a more favorable contract with the Teamsters.

By the provisions of the Multi-Employer Pension Plan Amendment S1076 none of these options are open to me. I have been advised that in the event we cease to participate in the Multi-Employer Plan my company would be liable for the proportionate share of the unfunded vested amount of the Central States Teamsters Pension Fund. The most recent figures indicate my share could be as much as \$420,000. The net effect of this is that all the assets of the company, my house, and all my personal belongings would go to the Teamsters Pension Fund. As in most small businesses, the owner is personally pledged for all indebtedness.

Selling is not a viable option since the pension liability would exceed or greatly reduce the asset value. Closing the doors is not viable for obviously the same reason. A more favorable contract is not possible since the bargaining unit already has the capability to grasp the assets of the company if no settlement is reached.

As an employer I have participated in at least 9 collective bargaining negotiations since 1955. In each and every agreement there was a process of give and take. In each and every case we agreed to pay a given sum of money per employee per week into

a Pension Fund. At no time did we ever agree to pay a defined amount to the employee on retirement nor has there ever in any negotiation been any dialogue about a defined retirement amount. Our present contribution per employee per year is \$2652.00. With the enactment of S1076 the Federal Government has placed themselves directly into my collective bargaining process. It says now that by law we must bargain and if we do not reach an agreement the bargaining unit has the obligation to confiscate my assets as well as the right to bring all other economic sanctions against me. In the events my employees should decide to decertify the Pension Fund can confiscate my assets. The employer has no voice in decertification.

Now there are some who will argue that the employee is the one who suffers because of under funding and they had no part in shaping their destiny in this matter. To this I would answer "NOT TRUE". The employees during those 9 negotiations agreed to work under given conditions. One of which was a specific amount contributed to retirement. At any time prior to agreeing to their contract conditions they could used their economic recourse "IE STRIKE". There is evidence of the effect of this capability when you consider the \$2652.00 contribution which is a substantial amount.

Without burdening this committee with further argument I submit that the law as it stands now is unjust, unreasonable, and probably unconstitutional. Most certainly the impact on my small business and no doubt many other business around the country is beyond all reason. I urge this Committee to pass this bill on with a recommendation for passage at the earliest opportunity before irreparable damage is done.

Testimony of Jay Stone
Submitted for the Record
of the
Hearing of the Subcommittee on Labor
of the U.S. Senate on S. 1748

My name is Jay Stone. My wife and I, together, own 100% of the stock of Naman Rainwear Company, Inc., a manufacturer of ladies' rainwear located in New York's garment center.

Our business was started about 45 year ago by my wife's father, Nathan Goldman, who turned over the business to us about 15 years ago.

Naman has been an ILGWU shop since its inception and contributes to the ILGWU Retirement Fund.

Naman invests in pieces, goods, and other raw materials, designs the garment and does the cutting. The sewing together of the cut pieces is done by contractors who employ between 150 and 250 ILGWU workers, all producing goods for us.

Our annual sales volume in recent years has fluctuated between \$4 and \$8 million. Our net worth, as of the current time, is about \$600,000. Our withdrawal liability to the ILGWU

Retirement Fund, as of December 31, 1979, came to about \$615,000, and, I believe is in excess of that sum at the present time.

My wife and I are both 60 years of age. We have one child who is a lawyer, not in the business. Given our age and the circumstances of our lives, we have naturally begun to think about retirement.

Nevertheless, because of MEPPAA, it has become impossible for us to retire, for it is no longer possible to sell our business.

No one is prepared to entertain the idea of buying a business in which the withdrawal liability exceeds its net worth. As a matter of fact, in recent years two companies expressed interest in acquiring us but, because of the withdrawal liability problem, both prospective purchasers backed away from the deal.

The adverse consequences of MEPPAA's withdrawal liability for the ladies' apparel and childrenswear industry are by this time obvious and well-established.

First, most apparel firms are small family-owned businesses without much net worth and inevitably rely heavily on borrowing from banks and other credit institutions. There is wide-spread evidence that under established accounting standards, these firms will have to reflect, on their balance sheet, either the total unfunded vested benefits of the ILGWU Retirement Fund or some estimate of the company's contingent withdrawal liability. Moreover, even if the plan's unfunded vested benefits or the company's contingent withdrawal liability are not reflected on the balance sheet, all credit institutions -- and particularly those doing business in the ladies' apparel industry in New York -- are aware of the fact that the ILGWU Retirement Fund now has unfunded vested benefits of approximately \$1 billion and are therefore seriously concerned about the effect of withdrawal liability on the credit worthiness of apparel firms.

Second, as is clear from my own case, withdrawal liability has a terrifying impact on an apparel firm's ability to sell its business as a going concern. The buyer doesn't wish to assume the liability. The seller cannot pay the liability out of the purchase price, because the value of the business is frequently less than the withdrawal liability. Additionally, MEPPAA's sale of assets, bonding, and liability provisions are tyrannical in that they actually prevent sales.

The result is that businesses close, workers are out of jobs, the contributory base of the ILGWU Retirement Fund declines, and the remaining employers have a larger contingent withdrawal liability since the employer who was forced to close rather than sell is unable to pay his withdrawal liability in full.

Third, a company that liquidates in bankruptcy may avoid 50% of the withdrawal liability that would otherwise be incurred. Thus, MEPPAA encourages insolvency and bankruptcy as a method for small businesses to reduce their withdrawal liability.

Fourth, the statute clearly creates a disincentive to business expansion, for the result of expansion is inevitably to increase withdrawal liability. However, where there is a reduction in the general level of business activity (which is not uncommon in our industry) MEPPAA places the employer in a worse position than he would have been had he maintained his business at the same level of activity.

Fifth, MEPPAA also discourages new investment. Both the ILGWU Retirement Fund's large unfunded vested benefits, and the possibility of incurring large withdrawal liability if a prospective venture fails, discourages the prospective investor from even entering the unionized sector of the ladies' apparel

industry. His capital is more likely to flow to off-shore production, imports, or non-union production.

Sixth, MEPPAA encourages employers to resist unionization at all costs and even to close up rather than negotiate a collective bargaining agreement which requires contributions to the ILGWU Retirement Fund. In this way, the ILGWU's job of organizing the unorganized employer has become much more difficult. "Sweetheart" unions, which offer protection to the employer against organization by the ILGWU or other legitimate unions, have been given a new impetus.

All of these factors have an adverse impact on the ILGWU Retirement Fund itself. To the extent that existing employers are encouraged by MEPPAA to go off-shore, to import, or to operate non-union, the Fund's growth is limited and its financial stability is impaired.

Some employers are undoubtedly induced by MEPPAA to gradually reduce the level of their business activity and the number of their employees so as to avoid the consequences of withdrawal liability. This is accomplished by gradually reducing business to a level just short of incurring a partial withdrawal and continuing to do so until the business shrinks to the point that any withdrawal liability would be offset by

the application of the "de minimis" rule. In this manner, the contributory base of the Fund is eroded and the Fund becomes increasingly insolvent.

As previously stated, in many instances in the apparel industry, the employer's withdrawal liability far exceeds the company's net worth. As a result, the employer's own "pension" is wiped out.

For all of the foregoing reasons, I urge that S. 1748 be adopted as the law of the land and that MEPPAA be neutralized so as to avoid the intolerable conditions which I have just described.

Testimony of Jesse Newberger
Submitted for the Record
of the
Hearing of the Subcommittee on Labor
of the U.S. Senate on S. 1748

My name is Jesse Newberger. I am submitting this statement specifically in support of S. 1748, and in support of the repeal of the withdrawal liability provision of MEPPAA.

I am the President of Allison Frocks, Inc., a privately owned business that manufactures moderate priced ladies' dresses in the New York garment center. We operate under a collective bargaining agreement with the International Ladies' Garment Workers' Union and contribute to the ILGWU Retirement Fund. Directly and through contractors who work exclusively for us, we employ about 165 garment workers on a regular basis and, during busy seasons, substantially more -- all under an ILGWU contract. I suppose we are an average sized manufacturer in our industry. We have an annual volume of sales of between \$4 and \$5 million.

Like most of our competitors, we operate without large amounts of capital. Our net worth is in the neighborhood of \$400,000. And, our contingent withdrawal liability created by MEPPAA is also about \$400,000!

I own 45% of Allison's stock. My partner Phil Stein owns 45%, and a key employee, Alan Sperber, has acquired the other 10%. I am 59 years of age, Phil is 65 and Alan is 53. Because of MEPPAA, my partners and I are now effectively prevented from either selling or liquidating our business. In our late middle age, we have become the captives of the business which we had hoped would provide us with some leisure and security in our old age.

Before MEPPAA, we could reasonably look forward to either selling our business, if not to an outsider, then to younger key employees, such as Alan Sperber or Phil Stein's son, who is also employed in the business. However, -- now since the inevitable consequence of a sale would be that the purchasers would have to assume a withdrawal liability equal to the net worth of the business -- a sale of the business is no longer possible. As for outsiders -- entrepreneurs interested in entering or expanding their activities in the apparel industry -- they find it more attractive to import, operate non-union, or produce off-shore rather than to produce under an ILGWU agreement where they will find themselves locked into the withdrawal liability provisions imposed by MEPPAA.

Similarly, we are not even in a position where we can afford to liquidate our business and retire. Liquidation would

trigger a withdrawal liability which, as I have indicated, is approximately equal to our net worth. We would be wiped out.

I have to express a certain amount of astonishment and anger at this turn of events. For 33 years we have been operating as a union shop, meeting union standards and contributing to the ILGWU Retirement Fund. We have gladly done what had to be done to provide our own employees with some retirement income in their old age. In successive collective bargaining agreements, we have agreed to pay ever increasing amounts to provide such retirement security.

But we assumed when we signed our ILGWU contract that, as long as we honored our contractual obligation to pay the contractually stipulated amount to the Fund, nothing more could be asked of us. Nobody told us before we signed any ILGWU contract that, through no fault of ours, we could become liable to pay our entire net worth to the ILGWU Retirement Fund; that, when it came time for the boss to retire, there might be nothing left to retire on; and that we might no longer be able to sell or even liquidate our business.

Worse still, our withdrawal liability is larger than it otherwise would be because so many smaller entrepreneurs -- unable to compete with non-union shops, imports, and off-shore

producers -- are forced to liquidate and then have insufficient assets to pay off their withdrawal liability to the ILGWU Retirement Fund, thereby increasing the withdrawal liability of less marginal entrepreneurs, such as ourselves.

One other point. We depend upon credit from our suppliers and sometimes on unsecured loans from the banks with which we do business. Thus far, we have not shown our withdrawal liability on our financial statements. But, as I understand it from our accountants, we may soon be compelled to divulge this information. If and when that happens, I believe it will be far more difficult, if not impossible, for us to obtain satisfactory credit terms from our suppliers or from our banks.

In short, we believe MEPPAA is a monstrosity. I understand the problems that precipitated its enactment. But, at least in the ladies' and children's apparel industry, the cure has been worse than the disease. I strongly urge the enactment of S. 1748 and the neutralization of MEPPAA's withdrawal liability provision.

Testimony of Alan Lubell
Submitted for the Record
of the
Hearing of the Subcommittee on Labor
of the U.S. Senate on S. 1748

My name is Alan Lubell. I am the president and principal shareholder of Sandy Shaw, Inc., a privately owned manufacturer of women's sportswear and dresses located in New York City. I am submitting this statement in support of S. 1748 and, more generally, in support of the repeal of the withdrawal liability provision of MEPPAA.

I founded the firm about 22 years ago with my partners, Jules Alpert who owns 30% of the stock, and Harvey Fine, who owns 10%. I am now 59 years of age, Mr. Alpert is 58, and Mr. Fine is 43.

We are unusual in the garment industry in at least two respects. First, we manufacture directly most of the goods we produce rather than through contractors. We own two factories employing, at the present time, somewhere between 140 and 150 workers covered by ILGWU contracts and by the ILGWU Retirement Fund to which we contribute. Second, although our volume of business is only about \$5 million per annum, we have a net worth of \$1,300,000, which in our industry is unusually high.

Nonetheless, our withdrawal liability under MEPPAA is approximately equal to our net worth.

In effect what MEPPAA has done is confiscate our business, lock, stock and barrel. Our unusually high net worth -- which would otherwise have been available to expand the firm or to provide the senior principals in the firm, including myself, with a meaningful retirement income -- is essentially no longer available to us for either of these purposes.

Because our withdrawal liability would increase if the firm increased in size, we have abandoned any plans we once entertained to expand our operation. As a result, there will be both fewer employees covered under ILGWU contracts than would otherwise be the case and a lower level of contribution to the ILGWU Retirement Fund.

Furthermore, our business is now unsaleable. No one in his right mind would be prepared to pay \$1,300,000 for a company with a withdrawal liability of the same amount.

Finally, if we were ever forced to liquidate -- which could easily happen in an industry as volatile as ours and in an economy as precarious as the current one -- MEPPAA would have catastrophic consequences. The entire net worth of the

firm would be wiped out. My associate, Jules Alpert, who has no assets other than his interest in our firm, would be transformed overnight from a successful businessman to a indigent welfare recipient.

In my opinion, MEPPAA's withdrawal liability provision is outrageous. It has done an incredible injustice to innocent businessmen. It has effectively confiscated the business which my partners and I have built up over many years through our own hard work, imagination, resourcefulness, and willingness to take business risks. And, it has deprived me of the possibility of a secure old age.

Whatever evil the statute may have been designed to cure is incomparably smaller than the evil it has created, at least in our industry. I say this selfishly but, as I am sure you are aware, this statute is no more of a blessing for the workers employed in the industry than it is for the entrepreneurs who are responsible for providing their jobs. MEPPAA creates disincentives to the transfer and expansion of business. It creates incentives to off-shore and non union production. It encourages resistance to unionization and promotes "sweetheart" deals with corrupt unions. And in all of these ways it impairs the integrity of the ILGWU Retirement Fund.

I urgently appeal to the Congress to enact S. 1748 or, failing that, to repeal or amend MEPPAA before it does irrevocable harm both to our industry and to the employees in our industry for whose benefit MEPPAA was mistakenly enacted.

STATEMENT OF

JOE A. MASTERSON, CHAIRMAN OF THE BOARD

AND

CHIEF EXECUTIVE OFFICER OF
THE TERSON COMPANY, INC.

The Terson Company, Inc. formerly known as Ward Foods, Inc., with its principal offices in Chicago, Illinois has been in the food processing business since the 1870's. At this time, it is the plaintiff in one of the approximately 80 lawsuits challenging the procedures and withdrawal liability provisions of the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA). It is clear from the mere fact of the substantial litigation provoked by MPPAA that a legislative solution is necessary and Terson heartily supports S. 1748 as an appropriate remedy. I believe that the Terson story is particularly instructive regarding the havoc and unforeseen effects resulting from the enactment of MPPAA.

In December of 1980, Terson sold the assets of its Chicago bakery operations, known as Buttermaid Bakeries, to a national baking company already a major contributor to the same plans as Terson. Terson had made all required contributions to two multiemployer pension plans covering the employees of Buttermaid Bakeries for over ten years. At the time of the sale, one plan was fully funded and the other plan clearly was substantially funded. As part of the sales agreement, the buyer took over Terson's operations and employees and assumed Terson's obligation to contribute to the pension funds.

Terson received \$1.5 million for the sale of assets. Five months later, the Trustees of the pension plans in question demanded that Terson pay approximately \$3.5 million as withdrawal liability under the authority of MPPAA and the Employee Retirement Income Security Act (ERISA). This liability, to be paid over a period of eight years, is more than double the amount

realized from the sale, approximately three-quarters of Terson's net worth, and almost \$1 million more than the contributions made by Terson in the preceding ten years.

Terson historically agreed to make contributions to multiemployer pension plans on behalf of its employees under collective bargaining agreements with union representatives. Congress, under ERISA and MPPAA, wrote a different contract binding Terson to fund benefit levels established by independent trustees for employees who no longer work for Terson and, in addition, to fund benefits for employees who never worked for Terson. The ludicrous results of MPPAA cannot be more strongly stated or easily understood than by looking at the disastrous financial effect of an ordinary business transaction which has in no way endangered the pension benefits of plan participants.

The imposition of withdrawal liability undermines Terson's reliance upon the terms of its collective bargaining agreement as to the limitation of its liability. Terson would never have sold Buttermaid Bakeries for \$1.5 million if it had expected to owe a liability of twice the amount realized from the sale. As a result, Terson now faces the expense of litigation which questions the adequacy of procedures for determining withdrawal liability and challenges the fundamental constitutionality of a statute which rewrote its contract with union representatives. In addition, if MPPAA is upheld, Terson and many other companies are faced with impairment of cash flow and ability to obtain credit; moreover, credit already extended

could be withdrawn and many companies could be put out of business.

One of the main problems with present federal pension law is the role of fund trustees. Plan trustees only have a fiduciary obligation to plan participants not to contributing employers. In Terson's situation, the fact that there are insufficient statutory standards defining actuarial assumptions and methods to be used in assessing the amount of withdrawal liability has permitted trustees to utilize unrealistic actuarial assumptions based on an earning rate of 5%, less than could be achieved if employees took the contributions themselves and put them in a savings account.

In fact, the Trustees admitted in Terson's case that the amount of the actuarially computed liability was wrong by admitting that the plans were, in one case, fully funded and in the other case, substantially funded. Such admissions have not caused the trustees to withdraw their claim based on MPPAA or modify their unrealistic actuarial assumptions with respect to the plan. Rather the trustees have indicated that they are compelled by MPPAA and their fiduciary obligations to participants to seek whatever withdrawal liability they can collect whether or not fiscally necessitated.

The incongruous result under the partial withdrawal provisions of MPPAA is highlighted in Terson's case by the fact that, if Terson had opted to fire 69% of its work force rather than proceed with a sale of assets, it would have incurred no liability. The employer who sells an operation which is

experiencing a decline in profitability, thus saving his employees jobs, is punished. The withdrawal liability provisions clearly fail to work fairly for employers or employees. There simply is no rational relationship between the imposition of withdrawal liability in a case such as Terson's and the ends sought to be achieved by Congress when it enacted MPPAA. Trustees treat well funded and fully funded plans equally and establish actuarial assumptions and benefit levels which bear no relationship to the experience of an individual plan; unreasonable economic expectations are permitted to govern the computation and imposition of withdrawal liability.

Terson is subjected to an illusory yet disabling liability where both pension plans at issue are financially sound and no pension benefits are jeopardized. The predictable impact, if relief is not provided under MPPAA, will be injury to Terson's other current and retired employees possibly by layoffs, wage reductions, reduced benefits and ultimately by the loss of jobs through MPPAA's destruction of Terson.

Congress intended to stabilize and support private pension plans with enactment of MPPAA. The result has been the opposite. The fundamental problem in MPPAA is that it destroyed the basic premise of contract law that a person is only liable for that which he promises to pay. Moreover, MPPAA destroys a basic concept of trust law, in that trustees are exculpated from all responsibility for fiduciary decisions, by shifting all financial liability to the employer who never contracted with plan trustees and to whom trustees owe no fiduciary obligation. S. 1748 would restore these concepts and businesses, such as Terson, would be able to continue to support retirement income plans on the basis they contracted.

STATEMENT SUBMITTED BY CHESTER W. NOSAL, WINSTON & STRAWN

This statement is submitted on behalf of clients of Winston & Strawn that are companies which are family-owned freightforwarding businesses operating through approximately twenty offices, primarily on the East and West coasts. Because of their business in freightforwarding, the companies work with the transportation and trucking industry and have, among various business interests, ownership interests in other companies which contribute to multiemployer plans.

These family operations have single-employer retirement plans for their employees; they have no subsidiaries and are not affiliated or deemed to be affiliated with any other companies for purposes of federal income tax reporting or any other laws. Nevertheless, because of the provisions in federal pension law providing for attribution of liability under the controlled group concept, these companies, through circumstances or transactions unrelated to federal pension law become liable for the withdrawal liability of unrelated companies which contribute to such multiemployer pension plans. That liability, under present pension and judicial interpretation, could be attributed to these family-owned companies which are not signatories to those multiemployer plans and could require them, in effect, to guarantee the obligations of unrelated companies.

The Control Group Problem

This Committee, in receiving testimony on S. 1748 and the potentially devastating problems of withdrawal liability under present law, should be mindful of the gross inequity and questionable constitutionality of the control group concept in framing a legislative solution for protection of pension benefits.

The basic problem with the control group concept is that, while it was included in the Employee Retirement Income Security Act (ERISA) to avoid circumvention of discrimination rules relating to plan design, it was carried over in the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA) without reconsideration of attribution of pension withdrawal and termination liability. Given the substantial changes under MPPAA regarding employer liability, MPPAA poses unforeseen and grossly unfair consequences for many small and large businesses, alike.

Under ERISA, an employer could be held liable for up to 30% of its net worth for unfunded vested benefits in the event of a plan termination. ERISA, as interpreted by the First Circuit in PBGC v. Ouimet, 630 F.2d 4 (1st Cir. 1980) cert. den., 101 S.Ct. 1356 (1981), further provided that, for purposes of imposing and collecting this liability, trades and businesses deemed to be under common control, whether or not incorporated or related in line of business, would be treated as a single employer. Hence, based on the controlled group concept legal distinctions between and among separate corporations and business

entities are ignored and liability may be attributed to unrelated businesses.

The primary purpose of the control group concept in ERISA was to overcome discrimination problems relating to pension plan design. Congress was aware that some employers had utilized distinct corporations with separate pension plans unfairly to favor highly compensated executives and employees over lower-paid workers. In these circumstances, a corporation would organize one corporation as the employer of upper management and executive personnel and provide a generous pension plan having high contributions and early vesting. Lower-paid workers would be employed by a second and separate corporation having a less generous pension plan with more restrictive participation and vesting requirements. The provisions of Internal Revenue Code section 414 when initially passed in ERISA in 1974 were inadequate and required subsequent amending in the form of Code section 414(m). Hence, the controlled group concept as it was initially envisioned to preclude circumvention of discrimination rules has required rethinking and change. Likewise, the controlled group approach as it applies to attribution of liability requires rethinking and change.

Exacerbation Under MPPAA

MPPAA substantially changed the liability of employers participating in multiemployer pension plans by:

1. Imposing liability, not only upon termination of a plan itself, but, upon the complete or partial withdrawal of an employer from the plan.

2. Eliminating the 30% cap on pension liability so that any controlled group member became 100% liable for the obligations of another member, whether truly related or not.

There are few objections to use of the control group concept to prevent establishment of discriminatory pension plans, though some fine tuning is certainly possible. Use of the control group concept, however, to attribute liability to corporations having no contractual obligations to a pension plan or employment relationship to the employees participating in it, is a grossly unfair result.

Legal Infirmities of MPPAA

There are several substantial arguments which have been raised against the withdrawal provisions of MPPAA which, when considered with respect to the control group concept, argue with even greater force for the need for congressional reconsideration.

First, there is a substantial question as to the constitutional validity of this statutory provision which retroactively attributes liability to a noncontracting party. In many instances, the control group concept may have the effect under present law of attributing 100% liability for plan benefits to a company which has no employees covered by the plan, which never agreed to contribute to the affected plan and which may, in

fact, never have agreed to contribute to any multiemployer pension plan and is unrelated in business and operation from the corporation which is the contributing employer.

Second, there is no evidence in the legislative history of MPPAA that Congress considered the impact of retaining the control group concept while establishing unlimited liability in the event of employer withdrawal. Thorough consideration of the ramifications of the use of the control group concept to attribute liability is acutely needed.

Third, the devastating impact of MPPAA's withdrawal provisions which shifts the financial burden (estimated by some to be as much as \$50 billion) of multiemployer plans to contributing employers threatens the financial stability of innumerable contributing employers. Moreover, such shift may have a tidal wave effect on the entire control group, engulfing financially healthy employers totally caught off guard.

Fourth, the difficulties which caused Congress to apply the controlled group concept to single employer plans are inapplicable to multiemployer plans. Section 410 of the Internal Revenue Code, in fact, explicitly states that the discrimination rules do not apply to the exclusion of employees represented by a collective bargaining agreement. In the typical single employer plan, the employer may adopt a plan unilaterally. The multiemployer plan, by contrast, is a product of negotiations between a collective bargaining agent and the employer. During those negotiations, the union representing the employee has ample opportunity to obtain assurances on the financial stability of

the employer. So long as the law does not require all members of a controlled group to participate in the negotiations, those members of the control group should not be forced to share in such liability.

Possible Solutions

First, the control group concept should be limited to the prevention of discrimination in pension plan design with regard to participation, vesting rights, accrual and level of benefits. It should not and need not be used to attribute liability. MPPAA already contains another provision which is entirely adequate for that purpose. Under section 4212(c) of ERISA as added by MPPAA,

[i]f a principal purpose of any transaction is to evade or avoid liability under this part, this part shall be applied (and liability determined and collected) without regard to such transaction.

Attribution of liability should not be automatic. Where there is reason to believe that corporations have purposefully structured an enterprise to avoid potential pension liability, it would be appropriate under section 4212(c) to ignore such transactions and impose liability. It is clearly unjust to attribute liability arising under a plan to a company that is not a contributing employer to the plan and did not negotiate the plan because a second company which, by application of mechanical rules of control, withdraws from such plan.

Second, another alternative, should a constitutional basis be found to justify such attribution of liability, would be to limit the withdrawal liability which may be attributed to control group members to a reasonable percentage of the group's net worth in order that the withdrawal of one member from a multiemployer plan will not result in the bankruptcy of the noncontributing employers. Under ERISA, plan termination liability was limited to 30% of the net worth of employers in the plan within five years of termination of the plan. With this approach as guidance, it may be appropriate to limit the withdrawal liability of controlled group members under MPPAA to 30% of the net worth of the group, provided that the net worth of the withdrawing member is considered in calculating the group's net worth. Thus, there would be some limitation imposed on potential liability, and the poor financial condition or bankruptcy of one member (often the cause of a withdrawal) will not overwhelm the other members of the group. This was the factual situation in PBGC v. Diamond Reo Trucks, Inc., 509 F. Supp. 1191 (W.D. Mich. 1981), where the court acquiesced in the PBGC's expansive interpretation of the Act and method of calculating a group's net worth which excluded liabilities of the bankrupt, withdrawing contributing employer.

Much of the criticism of MPPAA has focused on the fact that employers who believed they negotiated with employees' union representatives and made a promise to contribute to pension plans are finding that present federal pension law requires them to fund benefit levels established by plan trustees which were never

negotiated and are often unreasonably high. The problem with the control group concept, as applied to withdrawal liability under MPPAA, is even more egregious. Employers who never even promised to contribute to a multiemployer pension plan are being required to fund benefits for plan participants they never employed up to 100% of their net worth.

The controlled group concept in conjunction with MPPAA has two principal adverse effects:

1. It frustrates the growth of the private pension system by making multiemployer plans an unpalatable alternative. Employers will simply refuse to join these plans in the future.

2. It discourages small businesses (and big businesses, as well) to set up new companies and to go into new lines of business, thereby acting as a disincentive to capital formation.

To solve this problem, Congress should cease to use the controlled group concept for attribution of withdrawal and termination liability under MPPAA.

HOMCO

MECHANICAL CONTRACTORS, INC.

825 NATIONAL AVE.--P.O. BOX 5527
LEXINGTON, KY. 40505
AC 606 -- 255-5537

March 15, 1982

The Honorable Wendell H. Ford
United States Senator
for the State of Kentucky
Senate Office Building
Washington, D.C. 20510

Re: Multiemployer Pension Plan
Amendments Act of 1980

Dear Senator Ford:

We seek your concern for us as a small business operation that probably cannot survive under the inequitable and oppressive provisions of the captioned law. We operate a sheet metal contracting business that employs 18 people who were paid a total of \$268,000.00 in 1981. At the end of 1981 we had a net worth of \$330,000.00.

In April 1981, we received a demand from our sheet metal workers pension fund seeking a total payment of \$74,212.00 for "withdrawal liability" under the captioned law. Prior to May 1980, we had been a member of a sheet metal contractors' association that negotiated collective bargaining agreements with the Sheet Metal Workers Local 110, headquartered in Louisville. Lexington is within the Louisville local's jurisdiction, but has very few union contractors. We could not obtain contracts in the Lexington area under the terms of the collectively bargained agreement, so we gave notice, in May 1980, of our withdrawal from the contractor's association. We then undertook to bargain with the union on our own individual basis, but without success, and we became a non-union contractor on August 19, 1980, the termination date of our previously existing contract. We ceased making contributions to the union pension fund and thereupon became a "withdrawing employer".

At the time we withdrew, the applicable federal law (ERISA) held us contingently liable to our union pension fund only in the event the pension plan terminated within five years with insufficient assets to provide benefits at the level guaranteed by the Pension Benefit Guaranty Corporation, and then only to the extent of thirty percent of our net worth. Our decision in early 1980 to withdraw from our contractor's association was made with the conscious realization that we might have an obligation to our union pension fund five years later. We were extremely surprised and disappointed when the captioned law was enacted on September 16, 1980, with apparent retroactive application to us.

The Honorable Wendell H. Ford
March 15, 1982
Page Two

The new law imposes an immediate liability for the funding deficiency of our fund essentially equal to our proportionate share of contributions made to the fund over the past several years, notwithstanding the fact that we did not promise any specific pension benefits to our employees or establish the amounts required to adequately fund those benefits. The union promised the pension benefits, and the union agreed, in essence, that our contributions would be adequate to fund those benefits. To the extent that our employees were promised pensions by their union which the union knew could not be funded from negotiated contributions, why should we now be held 100% responsible in making up the short fall?

We agree wholeheartedly that employees need to be protected from the abuses that have historically denied them the full realization of promised benefits at retirement. Their responsible government should have acted to prevent and prohibit such abuses, but the effect of the captioned law has no rational connection to that purpose. On top of the basic unfairness of the captioned law are its procedural aspects which permit the fund itself to ascertain its total liability for promised benefits and the deficiency of assets required to fulfill those promises. The fund's determination is essentially conclusive, subject only to an arbitration process whereby we would have the burden of showing that actuarial assumptions, growth projections, losses, etc. are unreasonable. We can't even effectively learn about those assumptions, projections, etc., in the arbitration process in order to prepare, somehow, to overcome the selfserving determination by the pension fund. We cannot even show that the trustees mismanaged their duties or were actively promising benefits that they, alone, knew could not be provided by agreed contributions. All of this seems most unfair in our system of government by law where impartiality is so important to a determination that one citizen is liable to another.

Our attorneys advised us that we could not afford to pay the cost of raising the constitutional law questions that have been generated by the captioned law. When we declined to pay the claimed liability, our pension fund sued us to collect it. It is our understanding that there are almost one hundred law suits throughout the United States questioning the constitutionality of the captioned law. Claims are as high as \$16,500,000.00 against individual employers. Hopefully, from our standpoint, some of those cases may be decided before we are required to spend great sums of money in defending the relatively small claim against us. Our attorneys are seeking to have the decision in our case delayed pending the outcome of the larger cases where the employers can afford to carry the constitutional questions all of the way to the United States Supreme Court.

The Honorable Wendell H. Ford
March 15, 1982
Page Three

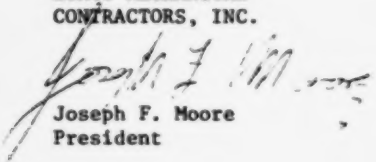
We beg you to carefully consider our plight. Through no fault of our own, the fund to which we faithfully made agreed contributions apparently does not now have enough assets to pay its promised benefits if it were obliged to do so immediately, which it is not. The unilateral position of a \$75,000.00 liability by an interested party in an essentially conclusive manner is grossly unfair. Please investigate what has occurred as the result of the captioned law and act responsibly to underdo the injustice. This can be accomplished while still providing a protection to those employees who are counting on receiving specific pensions at their retirement. The law should be repealed and another law enacted to protect those employees. The new law should attack the abuse of lying to pension beneficiaries with respect to how much benefit can be provided with agreed contributions. The new law should impose harsh penalties and liabilities on those who mismanage pension funds to the detriment of beneficiaries. To the extent that employers, unions, and/or fund managers are to be held liable to beneficiaries, the new law should create appropriate procedures for the establishment of such liability or shared liability in a manner that is fair to all and partial to none.

We apologize for the length of this request which we have endeavored to make as brief as circumstances permit. However, the problem is complex, and our future is dependent on your understanding of our plight. We hope that you will conclude that the present law is unfair and results in a terrible injustice.

To the extent that you deem it advisable and expedient, we stand willing and able to tell our story in person to you and other members of Congress.

Sincerely yours,

HOMCO MECHANICAL
CONTRACTORS, INC.



Joseph F. Moore
President

JFM:kam



Northern California Grocers Association

1807 Tribute Road

• Sacramento, California 95815

• (916) 929-9741

STANLEY F. JOHNSON, CFE • PRESIDENT

March 30, 1982

APR 1 1982

APR 1 1982

The Honorable Donald L. Nickles
Chairman, Subcommittee on Labor
Committee on Labor & Human Resources
United States Senate
Durksen Building
Washington, DC 20510

RE: Added Testimony for Support of S1748

Dear Mr. Chairman:

Thank you for the opportunity to add to the record in your close study of the current needed change in the Multi-Employer Pension Plan Amendments Act of 1980, adapted September 26, 1980.

These suggestions are an expression of the 1,000 members of the Northern California Grocers Association, a large percentage of whom are covered under the current law. These points should be changed by passage of the Hatch Bill, S1748.

1. When a change of stock ownership or from a partnership to a corporation makes no change in the contribution to the trust, no unfunded liability should be triggered.
2. When one partner dies and the other one or more buy him out and no change to the pension trust occurs, no unfunded liability should be billed.
3. The September 1980 amendments have caused union chains to open new stores non-union. These new employees are not included in the pension trust. Thus, there is no growth to the pension fund since it is the larger chains who are opening new stores. There have been six new very large supermarkets opened in Northern California in the past six months. They are all non-union stores operated by claims where all other stores in the chain are union. The unfunded liability requirements have been a major factor in this action and directly effected 700 employees.
4. These are some of the cases that are taking place right now in just Northern California alone. These problems are multiplied all over the U.S. where the normal course of business is being carried on. The membership of the Association of 1,000 members has ownership turn over of over 150 per year:

92-635 955

Valley Division

MARK KIDD, PRESIDENT
Mar Val Food Stores • Los

Northern California Grocers Association

DAVID C. LARSON, CHAIRMAN OF THE BOARD
Piedmont Grocery Co. • Oakland

Coastal Division

JACK REIMCHE, PRESIDENT
Mountain View Food Center • Antioch

AFFILIATED WITH THE CALIFORNIA GROCERS ASSOCIATION AND N.A.R.G.U.S.

The Honorable Donald L. Nickles
Page Two
March 30, 1982

Pension Trust - Unfunded Liability Causes for Triggered Actions

Example A - Lester T. Foster, Holiday Markets, Sacramento, California. Two markets are involved.

Approximately one year ago, Mr. Foster sold two of his Holiday Markets to another grocer known as Compton Markets with the understanding that all assets and liabilities would change hands in the matter of the escrow. The sale was consummated and escrow closed without undue difficulty. After such sale took place and was completed, Mr. Foster has received billings from Retail Clerks Union Trust Fund in the amount of \$374,179. Mr. Foster states that he does not have the assets since sale of his business to pay the so called unfunded pension liability.

Example B - Best Buy Markets and Nickles Payless Markets. The owners are Mr. Leonard Whitney and Mr. Gene Nickles.

In the year of 1980, Mr. Whitney and Mr. Nickles were proceeding with the labor negotiations with their local Retail Clerks Union No. 1288. Messrs. Whitney and Nickles realized that their few stores were the only markets that operated under a union contract within their trade areas. These stores of Messrs. Whitney and Nickles are located in small farm community areas in San Joaquin Valley. Realizing that their competitive situation with other stores within their trade area had deteriorated because of the existence of a union contract, they negotiated with the Union on the basis of controlling their own destiny. They asked the Union, as a negotiating point, to let them set up their own pension trust and their own health and welfare program for their employees. After serious negotiation between the parties concerned, the Union conceded that this would be the right way for the employers to go. As a consequence with the blessing of legitimate negotiations between the Union and the employers, the Pension and Health and Welfare programs were turned over to a major insurance company as the administrator for this particular employer. Shortly thereafter, the Union Trust Fund billed Nickles Payless Supermarket for Pension Liability in the amount of \$343,053 and the other partner in the grocers venture known as Best Buy Market was billed by that same trust fund for \$250,296. Their joint liability then turns out to be \$593,349. This liability has now become due and payable and if so paid would drive these farm community stores into insolvency.

Example C - Forrest Hill Store located in Pacific Grove, California. The owner and proprietor is Lynn Davis.

Upon calling this market, we found that this store had a disconnected phone number with no reference number listed. However, we were able to contact the owner of the meat market that had been located in that store and that meat market owner said that the store had failed in business and had been closed because of lack of business and he had moved his meat shop to

The Honorable Donald L. Nickles
Page Three
March 30, 1982

another shop located in another building. This independent grocer had been in business for many years and is now insolvent and out of business and has been billed for unfunded pension liability in the amount of \$25,767. No contact was made with the previous owner, Mr. Lynn Davis.

Example D - Sav Mor Markets, Hughson, California. The owner and operator of Sav Mor Markets is Mr. Bill Gwinn.

Mr. Bill Gwinn has acquired over the last twenty-five years five grocery stores in smaller farming communities. Those grocery stores were located in the following small towns: Riverbank, one market; Oakdale, one market; Empire, one market; Hughson, one market; and Waterford, one market. In late 1979, Mr. Gwinn decided to start liquidating his holdings in preparation for retirement. As a consequence, he sold three of his five stores. These three stores remain open today and are being operated by independent operators as single stores under different names. The remaining two stores that Mr. Gwinn owned remain under his ownership even today. His employees have requested that he withdraw from the local union which is Local No. 588 and as a result of these requests from his employees, the National Labor Relations Board officials conducted an inhouse election giving the employees two choices: 1) to remain affiliated with Retail Clerks Union Local No. 588, or 2) to decertify and work under non-union rules and regulations as set up inhouse. As a result of Mr. Gwinn's actions in selling three of his stores and acknowledging the request to decertify his remaining two stores, he has received a billing from the Pension Trust in the amount of \$308,307; from the Retail Clerks and from the Local Butchers Union he has now received a billing for \$29,449. In his efforts to prepare for retirement in the near future, he now finds himself in deep financial difficulties when the aforementioned sums are called due and payable.

Example E - Plaza Palace Market, Union Local No. 1288. The market is located in Tulare, California.

Approximately one year ago, Mr. Gerald Gong listened to a plea from his employees to withdraw from Retail Clerks Union No. 1288. Having heard the request of those employees, they then contacted the National Labor Relations Board and asked that they select a date for an election to give the employees a chance to vote either for or against remaining in the Union Local No. 1288. As a consequence, that market was decertified and became a non-union operation in the farm community in Tulare, California. On March 28, 1982, Mr. Gong stated that he had received a billing from the Retail Clerks Pension Trust Fund asking him for immediate payment of \$80,608. Mr. Gong is not able to pay. Such payment would drive him directly into bankruptcy courts.

The aforementioned examples are but a few of the numerous of examples that could be sighted in this local area.

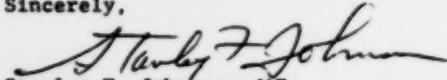
The Honorable Donald L. Nickles
Page Four
March 30, 1982

One Last Point:

There needs to be an amendment to the IRS Codes dealing with the growth of the defined benefit pension fund. There should be no limit on the growth of the fund by the investments made. This limit on growth is the excuse used by the trustees to keep increasing the payments. Later, if the investments don't do as well, the commitments are already made to the retirees and more unfunded liability is built up.

We look forward to your asking us any questions about these and many other cases here in Northern California. Your immediate help in amending this law is truly needed.

Sincerely,



Stanley F. Johnson, JAE
President
Northern California Grocers Association

SFJ:tcMp

STATEMENT
OF THE
NATIONAL AUTOMOBILE DEALERS AND ASSOCIATES
RETIREMENT TRUST

The National Automobile Dealers Association is a trade association representing approximately 20,000 retail automobile dealers throughout the United States.

Automobile dealers throughout the country participate in various union sponsored pension plans. These jointly trustee, multi-employer plan vary from small local trusts to very large national plans. Likewise, the liabilities of these plans vary from small to quite large. Depending upon a dealer's location the extent of unionization of his workforce may vary from 5% - 10% of his employees to over 90%.

The Multiemployer Pension Plan Amendments Act of 1980 has proven to be a major problem for many automobile dealerships. Consequently, we applaud Senator Hatch's introduction of S1748, and his sensitivity to the plight of many businesses now faced with enormous liabilities which neither they nor their unions considered a part of the bargain when pension benefits were negotiated.

It is hard to understand how legislation intended to correct the problems of a few plans and the potential adverse effect they might have on the "insurance system," had to be written so broadly as to encompass all multiemployer plans, many of which are in relatively good shape.

Effectively, the 1980 Act provides a bailout of both unions and employers who have abdicated their individual responsibility in the past by handing out ever increasing benefits without regard to the cost ramifications.

Of particular concern to businessmen is the fact that the rules of the game were arbitrarily altered in the midst of an agreement two parties negotiated and accepted. If the new rules had been anticipated one or both parties would, perhaps, have opted not

to contract in such a way for retirement benefits. The Act, does not allow an option for renegotiation subsequent to the effective date and even goes one step further and closes the door retroactively, denying unsuspecting employers the right to make other arrangements after they have full knowledge of the facts.

The problem goes back to 1974 and ERISA itself, with its notion that the government can and should "insure" retirement benefits. When the idea of guaranteeing retirement benefits was finally accepted the multiemployer plan participating employer's fate was sealed. Had employers been able to foresee what Congress was going to do to them in 1980 or the magnitude of the problem financially, they would have left these plans in droves before April of 1980.

It would seem apparent now that the Congress is at last acknowledging what many individual members were saying privately previously, or as a television commercial personality has said, "I knew this wasn't a good idea."

Something must be done to straighten out this situation and relieve the pressure upon small businessmen. Sales of businesses have been severely curtailed and/or halted entirely. Withdrawal liabilities are so large that they exceed net worth in many cases, effectively bankrupting a company when withdrawal takes place due to a sale.

In the retail automobile business, dealerships change hands quite frequently through an asset sale. Many times the selling dealer wishes to invest in another dealership and is now prevented from doing so by stringent bond and escrow requirements, even though the buyer agrees to continue contributing to the plan at substantially the same contribution rate. Bonds and

escrow requirements of five years are unworkable and unacceptable to the seller. Tying up a large amount of capital equal to 50% or more of the entire asset value of a business is usually out of the question.

The Congress effectively put the fox in charge of the chicken-coop. The trustees of these plans have four methods to choose from to compute liability; naturally, they will choose the one that benefits the plan the most, indeed fiduciary standards demand it.

As a result of the cliff vesting rule used by virtually all such plans it is possible for the following scenario to occur; an employer contributes to such a plan for the duration of 3 contracts or 9 years, at which time his employees vote to decertify the union, never to be covered again. None of his employees vest and, therefore, will never receive anything from the plan, and yet the employer could well be faced with an enormous withdrawal liability in addition to the contributions he has made for 9 years. It is entirely possible for the business man to also be adversely impacted by things over which he has absolutely no control, such as the investments of the fund, the actuarial assumptions, and the benefits being promised, all of which impact on his potential liability.

The retail automobile business is extremely cyclical. As a result, it is possible, due to poor business conditions such as those that exist now in our industry, for a dealership to be faced with a partial withdrawal which, when assessed, will force the bankruptcy of the dealer.

Our member's major complaint philosophically centers on his basic freedom to operate his business without outside interference in an atmosphere which allows him to plan his business based upon known facts and conditions. It is inherently unfair to saddle

him with excessive burdens after the fact which could not be foreseen by him as he attempted to plan strategically. Pensions and other types of fringe benefits are voluntary on the part of an employer and subject to the demands of the competitive environment he operates in. Laws such as this destroy the basic foundations of this voluntary system and are in the end a detriment to employees who will lose jobs and benefits they once had because their employer decides he cannot live with such burdens and potential uncertainty.

Employers, particularly the small businessman, have been at the mercy of the unions and the joint boards of trustees that have passed out the benefits. The small businessman often has no choice as to whether he will be union or not, particularly if he wants to do business in a particular city. Of course, he has no say on the joint board of trustees, in fact the management trustees often have either not had much say or have abdicated their responsibility, allowing the union trustees to do what they wished. Many strange things can happen under these plans, all of which have an adverse severe impact upon the small businessman. He upholds his end of the bargain and makes contributions under the plan in a responsible manner, while the union is seeking new employers to come into the plan. In order to induce employees to join the union and employers to come into the plan they promise large benefits and lots of past service credit. Therefore, over a period of time the unfunded liability of a plan can grow quite dramatically because of handing out large benefits to brand new employees. This ultimately impacts upon the small businessman who has been participating in the plan all along and must now, when he withdraws, bear a share of the burdens of these larger much older groups.

When the problems that are created by this Act hit home, it is often the employees who are the ones hurt the most. They are the ones hurt when employers fail to join such plans and when employers withdraw from such plans. In addition, the huge withdrawal liability problems cause employees to lose their jobs simply because employers cannot afford to pay the liabilities and have to lay people off. We believe that it is easy to lose track of these small numbers of people when looking at the big picture and in attempting to solve this so called large problem, lots of employees get lost in the cracks.

This law is hurting union plans as can be seen by the fact, for example, that the Central States Teamsters Plan has sent out withdrawal liability notices totaling over \$130 million, and at this point has collected only \$217,000.00 They are not optimistic of collecting from many suits that have been filed. At present, well in excess of 70 law suits challenging this Act are in the courts. We are gratified to see that the Teamsters' believe that changes must be made and they must be made soon. We heartily concur. However, while suggested changes presented by the Teamsters may look attractive, we believe that there are still some basic problems that need further examining. We reject the idea that decertifications should still leave employers on the hook. We also reject the idea that a sale of a business to a nonunion employer should still leave the employer on the hook. We believe that in the case of decertifications the plan should look only at the actual employees effected by the decertification and to such issues as to whether they will ultimately receive any benefits from the plan. We concur also with the Teamsters' view that while MEPPAA provides for administrative relief to a certain extent, that it is useless for an employer to explore such relief, or for the plan to explore such relief since that which will be granted would be totally inadequate to deal with the serious problem we are faced with.

It has been pointed out that the entire unionized trucking industry would have an effective negative net worth if it accounted for the total withdrawal liability under the various Teamsters plans. We believe that it is safe to say that in many cases our automobile dealers in the typically heavy union areas could well have negative net worths themselves.

It is a sad commentary on the state of multiemployer plans when companies that employ an actuary to determine the cost of providing the present value of accrued vested benefits upon withdrawal, find that it is considerably less than the total contributions that have been remitted since the employer began participating in the plan. These plans were less well funded as a result of ERISA, which improperly allowed liberal 40 year funding requirements. We find later that many of these plans are actually in poor shape and should have been restricted to shorter funding periods than other plans. We urge the Congress give consideration to substantially shortening the funding periods on a graduated basis for multiemployer plans, from 40 to 20 years.

We urge the Congress to reconsider the Act and in such reconsideration think seriously about withdrawing the effective date of the Act and putting it on hold again for a future date while continual study takes place. In the middle of this study should be an analysis of PBGC's 1978 study of 200 plans. We believe that the figures presented by PBGC to the Congress, which stampeded the Congress into doing something, were suspect. Investigation should center upon the data used. We question whether data was even available under many of those plans, and how current it was.

Congress should not have included multiemployer plans in the 1974 Act. Unions resisted the inclusion of their plans in the Act, and yet the Congress included them anyway. Now, in order to correct this problem we need to force quicker funding and then allow the unions, as a result, to come back and bargain with employers for more in order to pay for the benefits. In the interim, we can either remove them from Title IV coverage or go back and revise the Act and delay Title IV coverage implementation.

We suggest that serious consideration be given to risk related premiums, especially for plans where there is no withdrawal liability because the plans are fully funded. For example, such plans may pay little or no premiums at all whereas those with greater unfunded liabilities would pay much higher premiums. This would penalize the plans that have been lax in their granting of large benefit increases without the funding to support them.

We urge immediate enactment of S1748.

TESTIMONY OF
THE CHICAGO ASSOCIATION OF COMMERCE AND INDUSTRY
ON THE
MULTIEMPLOYER PENSION PLAN STABILIZATION ACT (S. 1748)

The Chicago Association of Commerce and Industry strongly supports the proposed Multiemployer Pension Plan Stabilization Act and urges its prompt passage. CACI does, however, suggest that certain technical changes be made in the bill.

The enactment of S. 1748 will correct a grave, though well-intentioned error, the imposition of withdrawal liability on companies that terminate participation in collectively bargained multiemployer pension plans in which the employers have bargained only with respect to contributions to the plan. The experience of the past year has made it abundantly clear that withdrawal liability is economically harmful, weakens rather than strengthens multiemployer plans, and raises grave Constitutional issues. Congress has the rare opportunity, by repealing this unjust burden, to serve the interests of both labor and management and to protect the long range health of a vital element of the private pension system.

Withdrawal liability was intended to mitigate a pressing problem. A number of multiemployer plans, particularly those covering declining industries, are poorly funded. Some are in danger of actual insolvency, with a consequent loss of pension benefits by retirees and their beneficiaries

ERISA's original solution to this problem - a system of plan termination insurance analogous to that in force for single employer plans - was universally agreed to be unworkable. If it had ever been allowed to become effective, it would have encouraged employers to desert weak plans and would also have encouraged such plans to terminate and dump massive liabilities onto the Pension Benefit Guaranty Corporation.

There was, from an early date, widespread agreement on the need for an alternative to ERISA's original multiemployer plan provisions. Eventually, because of the pressure of artificial deadlines set by Congress, an alternative was passed into law, the Multiemployer Pension Plan Amendments Act of 1980. Among MEPPA's "solutions" to the perceived deficiencies of ERISA was employer withdrawal liability. It is probably fair to assert that withdrawal liability could not have been enacted on its own independent merits; it appeared workable and beneficial only by comparison with ERISA.

In its eagerness to correct previous errors, Congress unfortunately does not appear to have devoted to withdrawal liability the degree of analysis needed to make sure that it was not committing a new mistake. What MEPPA did, in effect, was to covert short-term obligations of a fixed magnitude into indefinite, uncontrollable, long-term obligations. Such a dramatic change in real corporate balance sheets necessarily has had dramatic effects, although the impact

may not be easy to trace precisely in each individual instance.

Before MEPPA, a company that contributed to a multiemployer plan agreed, in most instances, to contribute a fixed sum per worker-hour. A creditor or potential investor, in valuing the company, would treat this obligation as simply a species of wages that should be taken into account, like any other labor cost, in estimating the enterprise's future profitability. Creditors had no reason to be concerned about their debtors' entry into multiemployer plans, because contribution levels were subject to renegotiation, and contributions would automatically decrease if the business contracted. Hence, plan contributions did not compete with creditors' claims.

MEPPA changes the nature of plan contributions. Now a company must either continue contributing forever or face withdrawal liability. Assuming that the potential withdrawal liability is large, as it is in many cases, the employer's freedom to negotiate its way out of a plan is constrained, and a contraction of its work force, resulting in withdrawal or partial withdrawal, does not necessarily decrease its contribution obligation. From the creditor's point of view, then, the plan looks very much like a rival creditor that must be taken into account in deciding whether the employer is creditworthy.

In the simplest terms, MEPPA added an enormous new layer to America's corporate debt. This new debt is only slightly visible on conventional financial statements, but

it is hard not to believe that it has affected lenders' perceptions. Soon after the enactment of MEPPA, real interest rates rose to their highest levels of this century and have proven remarkably intractable. This may be a coincidence. Still, higher interest rates are the predictable response to a sudden weakening of corporate balance sheets.

The financial burden imposed by withdrawal liability and its adverse impact on interest rates affect more than a few employers or a handful of industries. For this reason, partial solutions that would leave most of the MEPPA debt burden intact while showing mercy to a small number of particularly hard-hit firms, do not address the main problem. For example, expanding the "construction industry exception" would decrease the burden on many small companies that go out of business, but it would not return plan contributions to their pre-MEPPA status. Withdrawal liability would remain in full force for ongoing concerns and would continue to weaken credit ratings and increase interest costs.

For these reasons, CACI supports the outright repeal of employer withdrawal liability for all companies except for those that voluntarily and knowingly assume it by bargaining about levels of plan benefits.

Contrary to assertions that have been made in a few quarters, the repeal of withdrawal liability would not jeopardize any plan participant's benefits. It is true that some multiemployer plans - a tiny proportion of the whole -

are teetering on the brink of insolvency. These plans are not, however, helped significantly by the existence of withdrawal liability. In almost all cases, such plans cover declining industries, and the contributing employers can no more pay their potential withdrawal liabilities than they can afford any other large increase in indebtedness. As a source of plan funding, withdrawal liabilities, in such cases, are no more than an illusion.

The vast majority of multiemployer plans are not in such grave financial condition, even when they have large unfunded liabilities. These plans do not face short-term cash flow crises, and there is no significant risk that benefits will be endangered in the foreseeable future. These plans' long-term problems stem from the failure to set benefits at realistic levels in relation to contributions, the perceived need to increase benefit levels to keep up with higher than expected inflation and mediocre rates of return on plan investments. These problems can be corrected over the long term, and such provisions of ERISA as minimum funding standards and fiduciary responsibility requirements will help to hasten the adjustment.

Withdrawal liability is entirely irrelevant to the causes of the long-term financial problems of multiemployer plans. It attempts instead to bolster plans by forcibly locking in currently contributing employers, a tactic that is self-defeating both because it undermines the financial health of those employers and because it frightens away

potential future contributors. If withdrawal liability is allowed to become a permanent feature of American law, multiemployer plans will eventually become an isolated and declining backwater.

For all of these reasons, the Chicago Association of Commerce and Industry supports the principles of S. 1748 and urges its enactment. The Association does, however, note that, in its present form, the bill is deficient in certain respects. The following remarks are intended to assist the Committee's deliberations by pointing out these deficiencies and suggesting remedies.

1. Renewed applicability of ERISA, §§4063 and 4064.

Because, under S. 1748, fixed contribution multiemployer plans would not be "multiemployer plans", they would not be exempt from Section 4063 of ERISA, which imposes liability upon substantial employers that withdraw from multiple employer plans, or from Section 4064, which imposes termination liability upon all employers that contribute to a terminating multiple employer plan or have contributed within the preceding five years.

A major reason for the passage of MEPPA was the general consensus, shared by both industry and labor, that Sections 4063 and 4064 established a completely unworkable liability scheme that, if applied to multiemployer plans, would lead rapidly to their demise. It is clear from Senator Hatch's floor statements accompanying the introduction of S. 1748 that the bill is not intended to revive this portion of ERISA.

To prevent Sections 4063 and 4064 from becoming applicable to fixed contribution multiemployer plans, the phrase "(other than a multiemployer plan)" should be replaced by "(other than a multiemployer plan or a fixed contribution multiemployer plan)" in Sections 4001(a)(2), 4063(a), 4063(d), 4064(a) and 4066 of ERISA.

2. Effect on previously assessed withdrawal liabilities. By repealing MEPPA's withdrawal liability provisions as of the date on which they became effective, S. 1748 implies that withdrawal liabilities that have already been assessed should be waived and that collected liabilities should be refunded. There is, however, no explicit statement to this effect, and it is possible that litigation would be necessary to secure refunds. The final bill should include provisions designed to prevent such problems from developing.

3. Repeal of beneficial portions of MEPPA. MEPPA did more than simply impose withdrawal liability. It also enacted measures intended to assist shaky multiemployer plans in overcoming their difficulties and regaining financial health. Among other things, these provisions regulate transfers of assets and liabilities by multiemployer plans (ERISA, §§4231 et seq.), provide for plan partition in cases where that course will save part of the plan from insolvency (ERISA, §4233), and set up a system of plan reorganization that, in appropriate circumstances, permits reductions in employer contributions and employee benefits (ERISA, §§4241 et seq.).

These provisions have independent merit and are not inextricably interwoven with employer withdrawal liability. Under S. 1748, none would be applicable to fixed contribution multiemployer plans. It may be that not all should be applicable, but such a judgement requires independent evaluation of their virtues and defects. They should not simply be swept away in the wake of employer liability.

4. Miscellaneous. The bill's definition of "fixed contribution multiemployer plan" does not parallel the pertinent portion of the definition of "multiemployer plan" (ERISA, §4001(a)(3)). Courts may read unexpected significance into the differences in language.

A particular problem is raised by the use of the phrase "two or more unaffiliated employers" (S. 1748, §2(d)(A), emphasis supplied). For purposes of Title IV of ERISA, different employers are by definition "unaffiliated", ERISA, §4001(b)(1). The bill's language implies a concept of affiliation broader than that set forth in Section 4001(b)(1). Congress should be extremely wary of introducing even the hint of such a notion into a statute that already has an uncomfortably long reach.

Chairman JAMES A. CAYBEN
 Senior Vice Chairman JOSEPH R. PERINI
 Vice Chairman ROBERT E. HIRSCHMAN JAMES SNOWDEN RALPH REIDEL GLENN MARTIN
 Treasurer EUGENE M. JOHNSON
 President and Secretary DANIEL J. HANSON SR.



American Road & Transportation Builders Association

April 5, 1982

The Honorable Dan Quayle
 United States Senate
 Russell Senate Office Building
 Room 363A
 Washington, DC 20510

Dear Senator Quayle:

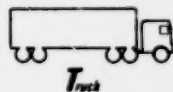
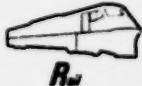
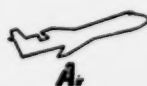
The American Road & Transportation Builders Association is a national federation representing all facets of the transportation construction industry. Headquartered in Washington, D. C., ARTBA's over 4,600 members and firms consist of contractors; material and service suppliers; manufacturers and distributors of construction equipment; representatives of the traffic safety industry; planning and design firms; transportation professors; and local, state, and federal transportation officials.

I would like this letter to be part of the record of the deliberations of your Senate Labor Subcommittee on Employment and Productivity regarding the Multiemployer Pension Plan Stabilization Act of 1981.

In 1974, Congress enacted the Employee Retirement Income Security Act (ERISA) to remedy a broad range of perceived problems with the retirement income system. ERISA included provisions relating to participation, vesting, funding, reporting, disclosure, and also included in Title IV a plan termination insurance program to "guarantee" the benefits of pension plan participants.

At the time ERISA was enacted in 1974, and until 1978, our members contributing to multiemployer pension plans were not particularly concerned with the onerous plan termination provisions of ERISA because those provisions applied only to "defined benefit" plans. However, in 1978, the Connolly decision (9th Cir. No. 76-2777, May 4, 1978) changed previous understandings by holding that multiemployer plans were "defined benefit" plans subject to the plan termination provisions of ERISA. These provisions assessed liability (up to 30 percent of net worth) for unfunded vested benefits on employers contributing to a multiemployer pension plan at the time the plan terminated, and assessed employer liability on employers who withdrew five years or less prior to plan termination.

(continued)



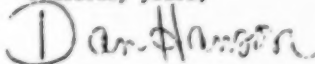
Since this court action resulted in many employers dropping out of multiemployer plans, Congress enacted the Multiemployer Pension Plan Amendments Act of 1980. The 1980 amendments modified the plan termination provisions of ERISA by broadening the concept of withdrawal liability and shifting the responsibility for guaranteeing the funding of vested benefits from the Pension Benefit Guaranty Corporation (PBGC) to the contributing employers.

Your colleague, Senator Orrin Hatch, has introduced a bill--the Multiemployer Pension Plan Stabilization Act of 1981 (S1748)--which will correct the problems that have been and continue to be created by the 1980 multiemployer amendments. This bill would also remove the construction industry's multiemployer plan from the burdensome and inequitable withdrawal liability provisions of Title IV of ERISA.

The current legislation is causing our members a great deal of concern over the withdrawal liability provisions of ERISA.

We strongly encourage your subcommittee and the entire Senate to give favorable consideration to S1748.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Dan Hanson". The signature is written in a cursive, somewhat stylized font. The first letter "D" is large and loops around the first part of the name.

Daniel J. Hanson, Sr.
President

Senator NICKLES. This meeting is adjourned.

[Whereupon, at 12:20 p.m., the subcommittee adjourned at the call of the chair.]

○